1873.

SUPREME COURT OF THE UNITED STATES.

No. 159.

MARIA A. FLETCHER HIPP ET AL., HEIRS OF JAMES FLETCHER, COMPLAINANTS AND APPELLANTS,

v.

CELINE BABIN, WIDOW OF URSIN JOLY, ET AL.

APPEAL FROM THE CIRCUIT COURT UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

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United States of America, Eastern District of the State of Louisiana.

FLETCHER'S HEIRS
v.
URSIN JOLY et als. } No. 1285.

Pleas and proceedings before the Hon. the Circuit Court of the United States for the Fifth Judicial Circuit and Eastern District of the State of Louisiana, at the April Term, A. D. 1854, of the said Court, held at the City of New Orleans, in the District aforesaid, on the 21st day of June, A. D. 1854.

Be it remembered that heretofore, to wit, on the 29th day of November, A. D. 1844, came Felicité Fletcher Hipp, Maria Antonio Fletcher Hipp, and others, heirs of James Fletcher, deceased, by their solicitors, Messrs. Soulé and Perin, into the Clerk's office of the said Court, and filed a Bill in Chancery, which is in words and figures as following, to wit:

Bill in Chancery.

Filed 29th November, 1844.

To the Honorable the Judges of the Circuit Court of the United States, for the Fifth Judicial Circuit, holding sessions at New Orleans, in the Eastern District of Louisiana.

In Chancery sitting.

Humbly complaining, your oratrixes Felicité Fletcher Hipp, and Maria Antonio Fletcher Hipp, aliens, and residing, the former in Vera Cruz, Mexico, the latter in the City of Madrid, Spain, for themselves and on behalf and for the use of Augustin Cuesta, Javiera Cuesta, and Felicitas Cuesta, aliens, the forced heirs of Adelaide Fletcher Hipp, deceased, show unto this honorable Court that James Fletcher, late of the City of New Orleans, Louisiana, at the time a province of Spain, formerly of Ire land, the father of your oratrixes, the said Felicité and Antonio, was at the time of making his last will hereinafter mentioned, and at the time of his death, seised in fee simple, and otherwise lawfully possessed of, in the said Eastern District of Louisiana, divers freehold messuages, lands, tenements, premises, &c., and particularly of the lands, plantations, and premises, situate, bounded, and described as follows, to wit: two certain tracts of land in the Parish of Ibberville, in said District, on the left bank of the River Mississippi. The first measuring seven arpens and twenty-five toises in front and forty arpens in depth, bounded on the upper side by lands belonging in the year 1800

to Paul Challion, and the lower side by lands belonging in 1800 to Victor Blanchard; the second tract or plantation measures six arpens and eleven toises in front, and forty arpens in depth, bounded on the upper side by lands belonging in 1800 to Etienne Coulon, and on the lower side by lands belonging in 1800 to Paul Chiasson; another large tract of land or plantation situated at the old town of Manchac, having twenty-eight arpens in front, and eighty arpens in depth, more or less, bounded on one side by the said town of Manchac, and on the other by lands belonging in the year 1800 to Madame Fanchon: which said several tracts of lands or plantations were purchased by the said James Fletcher from Don Nicholas Verbois, S. Barguz Bohamond, and the succession of Beauregard, by acts passed before Pierre Pedesclaux in 1797, 1798, and 1800, for the sum of nine thousand dollars, released and confirmed unto the heirs of the said Fletcher in the year 1806 by Francisco Ramon Canez.

And your oratrixes further show, that before the decease of the said James Fletcher, to wit, on the thirteenth day of March, in the year 1802, at New Orleans, he did truly make and execute his last will and testament, according to law, called a Mystic Will, with all due formalities, recorded in the notary office of Pierre Pedesclaux, on the 17th of September, 1804, and afterwards admitted to probate, and its execution ordered by the Judge of the Superior Court of the Territory of Louisiana: and he did by the said will devise and bequeath to your oratrixes, the said Adelaide, deceased, and their mother, Catharine Hipp, to share and share alike all his property, of which he died seised, real and personal (except a legacy to Peter Fletcher, a colored boy, of two thousand dollars), and constituted as executrix thereof, under certain conditions, the said Catharine Hipp.

And your oratrixes further show that the said James Fletcher left, at his decease, no other child except your oratrixes, and the said Adelaide, deceased, surviving him the said Fletcher, and that he was never married to any woman save to the said Catharine, their mother, and left no other legitimate descendants but your oratrixes, and the said Adelaide, deceased.

Your oratrixes further show unto this Honorable Court that the said James Fletcher, in the year 1802, took his departure from the said City of New Orleans for the cities of Vera Cruz and Madrid, and that he never was naturalized or in any manner became a citizen of the United States: and that your oratrixes, being minors, were taken by the said Catharine Hipp to the city of Vera Cruz, Mexico, in the year 1807, where they have ever since resided, and where the said Catharine, their mother, married Juan S. Coral, and subsequently died. Your oratrix, Maria Antonia, recently removed to Madrid in Spain; and that the said James Fletcher departed this life in said City of Madrid, on or about the third day of June in the year 1804.

Your oratrixes further show that your oratrix, Felicite was born on the 13th day of March, in the year 1798, and that your oratrix, Maria Antonia, was born on the 17th day of July, in the year 1802.

Your oratrixes further show unto this Honorable Court, that in the year 1806, one Daniel Clark, well knowing the said tracts of land and plantations hereinabove described to belong to minors, to wit, your oratrixes, did take possession of all and singular the said tracts of land and plantations, to sell, convey, and convert the same to his own use, thereby defrauding them out of their just rights. That he possessed and occupied the said lands, and in bad faith, and fraudulently, sold and disposed of the same to divers other persons, who purchased, occupied and possessed in equal bad faith and in defraud of the rights of your oratrixes: and that all of the said tracts, lands, plantations, &c., are now in the possession and the pretended ownership of the following persons, to wit: Ursin Joly, Victor Babin, Joseph Walsh, Rene Arnous, and the joint ownership of Victor Babin and Julien Allain, and by other persons to your oratrixes unknown. And that the defendants hold, occupy, and possess the same under color (and not otherwise) of a pretended title founded upon divers illegal, fraudulent, improper, and invalid sales of said tracts of land, plantations, premises, &c., made by the said Catharine Hipp, pretending to act in the said fraudulent sale, according to law and by the legal authorization of the Judge of the said Superior Court, and that the said defendants have jointly and severally enjoyed and received for a long space of time, the rents, revenues, and profits of the said plantations, lots or parcels of lands, to wit, since the year 1806, to the amount, as your oratrixes are informed, verily believe, and are ready to verify, of five hundred thousand dollars.

Your oratrixes further show unto this Honorable Court, that all of the said lands, plantations, premises, &c., as are particularly described hereinabove, together with rents, profits, revenues, &c., since the year 1806, were the property of your oratrixes and of the said Adelaide and her heirs, but that they were ignorant of their rights, and unable to enforce their claims till they arrived at the age of majority.

Your oratrixes further show to this Honorable Court that they have made frequent applications to the said defendants, respectively, to surrender and deliver up the said lands, plantations, &c., together with the tenements, rents, revenues, and profits of the same, to deliver up the title-deeds, vouchers, and documents relating to the same, and to come to a just and true account with your oratrixes for the rents, revenues, and profits thereof respectively, which have been received or enjoyed by them; with which requests your oratrixes had well hoped the said defendants would have complied.

But so it is, may it please this Honorable Court, that the said de-

to Paul Challion, and the lower side by lands belonging in 1800 to Victor Blanchard; the second tract or plantation measures six arpens and eleven toises in front, and forty arpens in depth, bounded on the upper side by lands belonging in 1800 to Etienne Coulon, and on the lower side by lands belonging in 1800 to Paul Chiasson; another large tract of land or plantation situated at the old town of Manchac, having twenty-eight arpens in front, and eighty arpens in depth, more or less, bounded on one side by the said town of Manchac, and on the other by lands belonging in the year 1800 to Madame Fanchon: which said several tracts of lands or plantations were purchased by the said James Fletcher from Don Nicholas Verbois, S. Barguz Bohamond, and the succession of Beauregard, by acts passed before Pierre Pedesclaux in 1797, 1798, and 1800, for the sum of nine thousand dollars, released and confirmed unto the heirs of the said Fletcher in the year 1806 by Francisco Ramon Canez.

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And your oratrixes further show that the said James Fletcher left, at his decease, no other child except your oratrixes, and the said Adelaide, deceased, surviving him the said Fletcher, and that he was never married to any woman save to the said Catharine, their mother, and left no other legitimate descendants but your oratrixes, and the said Adelaide, deceased.

Your oratrixes further show unto this Honorable Court that the said James Fletcher, in the year 1802, took his departure from the said City of New Orleans for the cities of Vera Cruz and Madrid, and that he never was naturalized or in any manner became a citizen of the United States: and that your oratrixes, being minors, were taken by the said Catharine Hipp to the city of Vera Cruz, Mexico, in the year 1807, where they have ever since resided, and where the said Catharine, their mother, married Juan S. Coral, and subsequently died. Your oratrix, Maria Antonia, recently removed to Madrid in Spain; and that the said James Fletcher departed this life in said City of Madrid, on or about the third day of June in the year 1804.

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Your oratrixes further show unto this Honorable Court, that in the year 1806, one Daniel Clark, well knowing the said tracts of land and plantations hereinabove described to belong to minors, to wit, your oratrixes, did take possession of all and singular the said tracts of land and plantations, to sell, convey, and convert the same to his own use, thereby defrauding them out of their just rights. That he possessed and occupied the said lands, and in bad faith, and fraudulently, sold and disposed of the same to divers other persons, who purchased, occupied and possessed in equal bad faith and in defraud of the rights of your oratrixes: and that all of the said tracts, lands, plantations, &c., are now in the possession and the pretended ownership of the following persons, to wit: Ursin Joly, Victor Babin, Joseph Walsh, Rene Arnous, and the joint ownership of Victor Babin and Julien Allain, and by other persons to your oratrixes unknown. And that the defendants hold, occupy, and possess the same under color (and not otherwise) of a pretended title founded upon divers illegal, fraudulent, improper, and invalid sales of said tracts of land, plantations, premises, &c., made by the said Catharine Hipp, pretending to act in the said fraudulent sale, according to law and by the legal authorization of the Judge of the said Superior Court, and that the said defendants have jointly and severally enjoyed and received for a long space of time, the rents, revenues, and profits of the said plantations, lots or parcels of lands, to wit, since the year 1806, to the amount, as your oratrixes are informed, verily believe, and are ready to verify, of five hundred thousand dollars.

Your oratrixes further show unto this Honorable Court, that all of the said lands, plantations, premises, &c., as are particularly described hereinabove, together with rents, profits, revenues, &c., since the year 1806, were the property of your oratrixes and of the said Adelaide and her heirs, but that they were ignorant of their rights, and unable to enforce their claims till they arrived at the age of majority.

Your oratrixes further show to this Honorable Court that they have made frequent applications to the said defendants, respectively, to surrender and deliver up the said lands, plantations, &c., together with the tenements, rents, revenues, and profits of the same, to deliver up the title-deeds, vouchers, and documents relating to the same, and to come to a just and true account with your oratrixes for the rents, revenues, and profits thereof respectively, which have been received or enjoyed by them; with which requests your oratrixes had well hoped the said defendants would have complied.

But so it is, may it please this Honorable Court, that the said de-

fendants, and to and with divers other persons, at present unknown to your oratrixes, whose names, when discovered, your oratrixes pray may be herein inserted, and they made parties defendants hereto, with proper and apt words to charge them with the premises, and contriving how to oppress and injure your oratrixes in the premises, sometimes give out and pretend they derive good and legal titles to the said lands, plantations, &c., from a pretended sale thereof from the said Catharine Hipp to the said Daniel Clark in 1806. Whereas your oratrixes expressly charges the contrary of said pretence to be true, and that the said Catharine Hipp never did or could convey a legal, good, and sufficient title in and to the premises described as aforesaid. That the decree made by the Judge of the said Superior Court on the 18th day of June, 1806, was contrary to the Spanish laws, then in force in the Territory of Louisiana. That if the said decree had been legal and in conformity with the said laws, yet your oratrixes charge that the said Catharine Hipp did not proceed to sell the said property according to law, having made a private act of the sale of the same to Daniel Clark, and without advertisement or any public notice given, before P. Pedescleaux, on the 23d day of June, 1806, only five days after the illegal decree for the sale of the same. That your oratrixes and the said Adelaide as universal heirs and legatees of the said James Fletcher, were justly and legally entitled to at least the three undivided fourths of all of the said lands, plantations, &c., as described hereinabove, and now in the possession of the said defendants, for proofs of which your oratrixes refer to the will of the said James Fletcher, and other proofs to be exhibited when required.

And at other times the said confederates will allege and pretend that the claims of your oratrixes have been prescribed and barred from lapse of time. Whereas your oratrixes charge the contrary, and state that your oratrix Felicité did not arrive at the age of majority until the year 1819. And your oratrix Maria Antonia did not arrive at the age of majority until the year 1823, and that they, together with the said Adelaide, being advised of the truth and justness of their said claims, did, in the year 1824, institute suits in the Second Judicial District Court, holding sessions at Plaquemines, against Simon Allain, Constant Viel, Tho. Blanchard, Julia Sharp, widow of Chisasson, Victor Blanchard, and others who were in the possession and the pretended ownership of the said several plantations, lots, tracts of land, &c., as are hereinbefore more particularly described and set forth. That the said suits were pending and undecided from the year 1824 till the year 1835, in October of the latter. When in consequence of the death of their attorney, Mr. Cuvillier, and your oratrixes having no other agents, attorneys, or persons to represent them in the United States, the said causes were, at the instance of the said Allain and others, the defendants therein, and without any default or design on the part of your oratrixes to discontinue the

same, dismissed by a judgment of non-suit, whereby the course of prescription, if it had ever began to operate against your oratrixes, was suspended and destroyed, and has no further effect against them.

Your oratrixes further show to this Honorable Court, and expressly charge, that notwithstanding the requests made of defendants as above stated, the said confederates have not, nor has either of them, delivered or sent to your oratrixes, or either of them, any account whatever, but continue in bad faith, well knowing the premises, and with the intention of defrauding your oratrixes, to occupy, possess, and enjoy the said plantations, tracts of land, and premises, as set forth and described above, and to enjoy and receive the rents, revenues, and profits thereof to the net and clear amount of thirty thousand dollars per annum, as your oratrixes are informed, verily believes, and are ready to verify. All of which actings and doings and pretences tend to the manifest wrong and injury to your oratrixes, and are contrary to equity and good conscience.

In tender consideration whereof, and forasmuch as your oratrixes are remediless in the premises by the strict rule of the common law, and are unable to obtain adequate and complete relief, except on the equity side of this Honorable Court, where matters of this and the like nature are alone properly cognizable and relievable. And your oratrixes expressly charge that the said Ursin Joly, Victor Babin, Joseph Walsh, Rene Arnous, and the joint ownership of Victor Babin and Julien Allain, are citizens of the State of Louisiana, and that your oratrixes are aliens. To the end, therefore, that the said defendants, and the rest of the confederates, when discovered, may, under oath, full, true, direct, and perfect answers make; your oratrixes pray that the said defendants and confederates, and each of them, be required to answer, under oath, all and singular the matters and things hereinbefore stated and charged, as fully and particularly as if the same were hereinafter repeated, and they and each of them thereunto distinctly and specifically interrogated; and that not only as to the best of their respective knowledge and remembrance, but also as to the best of their information, hearsay, and belief; and that the said confederates may also severally set forth what right, title, or interest, they respectively have or claim in or to the real estate of the said James Fletcher, as hereinbefore set forth and described, or any or what part thereof, and how and in what manner they arrive and make out the same, and by and under what deed or deeds, writing or writings, and may set forth the date and contents of all such deeds, before whom they were passed, and when and where recorded; and that the said defendants and the rest of the confederates may set forth strict and true accounts of all the rents, revenues, receipts, and profits, they or each of them have enjoyed or received since the year 1806, arising from the said plantations, lands, and premises, as hereinbefore set forth and described, or any part thereof; and set forth particularly what was the value and

amount of each crop on the said plantations, or any part or parcel thereof, held or pretended to be owned by the said defendants, or any of them, from the year 1819 to the time of filing the answers of the said defendants, not only upon their own knowledge and belief, but upon the information of their vendors or others. And the said will of James Fletcher, deceased, of 1802, in which he devised all his estate as aforesaid, and the provisions and dispositions thereof, be carried into execution by and under the decree of this Honorable Court, and the rights and interests of your oratrixes under the same be declared and secured; and that it may be declared that the sale made by the said Catharine Hipp to Daniel Clark, in the year 1806, above referred to, and all subsequent sales of the lands, plantations, premises, &c., as described herein, are null and void, and of no effect. And that the said defendants may be decreed to deliver up to your oratrixes the possession of all the said real estate as before described and enumerated, and now held and possessed by them, or either of them, jointly or severally, or in any other manner as owners or otherwise, and come severally to an account with your oratrixes for the rents, profits, revenues, and receipts, of the said real estate of the said James Fletcher, which have been possessed or received by the said defendants, or any of them, or any other person or persons, by their or either of their order, or for their or either of their use, since the death of the said James Fletcher in 1804, and respectively to pay over to your oratrixes, for themselves and for the use of their sister Adelaide's heirs, whatever shall be found due from them or any of them, upon the taking of any such account; and in the said account or accounts the said defendants may respectively be charged with interest for such balance as shall appear to have been in their hands from time to time. And that the said defendants may be decreed respectively to deliver up to your oratrixes all deeds and other writings in their hands, relating to the said real estate; and also the rents, profits, receipts, and revenues, possessed or enjoyed by any of their confederates or vendors of defendants, or which may have come to the use or benefit of any such defendants, confederates, and vendors. And that the defendants may each annex to their answers respectively, a plot, according to the most recent surveys, containing the situation and boundaries of any part or parcel of all or any of the lands, plantations, premises, &c., as hereinbefore described, and the number of arpens in the tract, plantation, or parcel, occupied by each respectively; and that they may annex thereto the names of the present possessors and pretended owners of all the said tracts, plantations, lands, premises, &c., which are embraced in this bill, together with a history or connected account of each of their titles, dating on the 23d day of June, 1806 (the date of the illegal and fraudulent rob made by the said Catharine Hipp to Daniel Clark), up to the present time, or till the filing of the answers of the defendants; and the

number of acres each one has respectively possessed or occupied, under any such titles as aforesaid, and the length of time they have each occupied or possessed the same; and that your oratrixes may have such other or further relief in the premises as the nature of the case may require, and as may seem meet to this Honorable Court, and agreeably to equity and good conscience.

May it please this Honorable Court, the premises being considered, to grant unto your oratrixes the people's most gracious writ of subpœna, issuing out of and under the seal of this Honorable Court, to be directed to the said Ursin Joly, Victor Babin, Joseph Walsh, René Arnous, and the said Victor Babin and Julien Allain, and their confederates, commanding them and each of them, by a certain day and under a certain penalty to be therein inserted, to be and appear according to law, and the course of practice in this Honorable Court, before the Honorable the Circuit Court of the United States for the Ninth Circuit, in and for the Eastern District of Louisiana, then and there to answer all and singular the premises, under oath, and to stand to, abide by, and perform such order and decree therein, as to this Honorable Court shall seem meet.

And your oratrix as in duty bound will ever pray, &c.

SOULE & PERIN,
Solicitors for Comp'ts.

Franklin Perin, agent and one of the solicitors for complainants, being duly sworn, says, that all the matters and things set forth and charged in the above bill of complaint, are true, according to the best of his knowledge and belief, and as derived from the information of others.—F. Perin. Subscribed and sworn to on this 29th day of November, A. D. 1844. For D. N. Hannon, Clerk; J. Q. A'Hoit, Deputy Clerk.

Amended Bill.

Filed 10th December, 1844.

To the Honorable the Judges of the Circuit Court of the United States, for the Fifth Judicial Circuit, in and for the Eastern District of Louisiana.

In Chancery sitting.

Felicite Fletcher Hipp and Maria Antonia Fletcher Hipp, aliens, and residing, the former in the City of Vera Cruz, Mexico, the latter in the City of Madrid, Spain, for themselves, and on behalf and for the use of Augustin Cuesta, Javiera Cuesta, and Felicite Cuesta, aliens, residing in the City of Vera Cruz, Mexico, the forced heirs of Adelaide Fletcher Hipp, deceased, bring this their amended bill, against Ursin Joly, Victor Babin, Joseph Walsh, René Arnous, and Julien Allain, all residing in the Parish of Iberville, in said State and

District, and citizens of the State of Louisiana. And thereupon, your oratrixes complain and say, that in their original bill, filed in this Honorable Court, on or about the twenty-ninth day of November, A. D. 1844, certain statements were erroneously made in matters of form, and not conformably to the rules of practice for the Courts of Equity in the United States, adopted in the January Term, 1842. That in the introduction, or part which contains the names of the parties, it is not stated who were the defendants in their original bill, page 1; whereas, your oratrixes would substitute the statement of the parties' names in this their amended bill, instead thereof. That immediately after the words "The age of majority," in the original bill, on page 7, and before the words "Your oratrixes further, &c," your oratrixes amend that part by inserting the following words, similar to which, are contained in the changing part of the original bill on page:—"Your oratrixes further show to this Honorable Court, that they, together with their sister Adelayde, now deceased, instituted suits in the Second Judicial District Court, holding sessions in the Parish of Iberville, in the State of Louisiana, on the day of in the year eighteen hundred and twenty-four, against Simon Allain, Constant Viel, Thomas Blanchard, Julia Sharp, widow of Chiasson, Victor Blanchard, and others, who were possessing and pretending to own all the tracts, lands, plantations, premises, &c., as described in their original bill, and which identical lands, &c., are now in possession of the defendants, with notice of said suits. That the said suits as aforesaid, were pending until the year 1835, when, in consequence of the death of their attorney, Mr. Cuvillier, the said causes were, at the instance of the said Allain and others, the defendants in the said causes, and without any default or design on the part of your oratrixes to discontinue the same, were nonsuited." That inasmuch as the interrogatories in the original bill, in the *interrogatory* part of the same, are not numbered according to rules 41 and 43 of the said "Rules of Practice," beginning on page 11 and 12 of said bill, your oratrixes amend that part of their bill in the following manner, to wit: To the end therefore, that the said defendants, and the rest of the confederates, when discovered, may, if they can, show why your oratrixes should not have the relief prayed for in their original and amended bills, and may, upon their several and respective corporal oaths, and according to the best and utmost of their several and respective knowledge, remembrance, information and belief, full, true, direct, and perfect answer make, each separately to the several interrogatories hereinafter numbered and set forth, that is to say.

First. Whether you derive your pretended title to the part of the premises in their original bill described, which you occupy, possess, or pretend to own, through the person and in the manner as set forth in the original bill in this case? And set forth what right, title, or interest you have, or claim respectively in or to the real estate of the

said James Fletcher, as set forth and described in their original bill, on any or what part thereof, what number of arpents, and how the same is designated and bounded, and how and in what manner you derive and make out your title to the same, and by and under what deed or deeds, writing or writings, and set forth the date and contents of all such deeds and writings?

Second. Whether you, the several defendants, and the persons through whom you claim title to the parts and parcels of the said premises, which you respectively claim and occupy, since the year 1806, have not received, occupied, and enjoyed large amounts of rents, revenues, and profits from the aforesaid premises? Set forth particularly the nature and amounts of the said rents, revenues, and profits, and who received the same; and set forth what was the value and amount of each crop on the said plantations, or any part or parcel thereof, held or pretended to be owned by each or any of you, the said defendants, or your vendors, since the year 1819, to the filing of your answer herein, not only upon your own knowledge and belief, but upon the information of your vendors and others.

Third. Whether you were not aware of the claim of the oratrixes at the time you made a pretended purchase of the part or parcel of the premises, as particularly described in their original bill of complaint, which each one of you respectively claim or possess? Set forth at what time you first knew or became aware of the claim of these oratrixes, and in what manner, or through what source of information.

And your oratrixes further pray, that this their amended bill may be filed, and that all of the said defendants, Ursin Joly, Victor Babin, Joseph Walsh, René Arnous, and Julien Allain, and the other confederates, when discovered, may answer it as fully, and in the same manner, as if it had been a part of the original bill; and that the prayer for relief and for process in the original bill may be extended and applied to this, their amended bill, and that all parts of the original bill, except where varied and changed by this, may be and remain, as if no amended bill had been filed in this cause; and that your oratrixes may have such other or further relief in the premises as the nature of the case may require, and as may seem meet to this Honorable Court, and agreeably to equity and good conscience. And your oratrixes as in duty bound will ever pray, &c. Soulé & Perin, solicitors for complainants.

Franklin Perin, agent and one of the solicitors for complainants, being duly sworn, says, that all the matter and things set forth, and charged in the above amended bill, are true, according to the best of his knowledge and belief, and as derived from the information of others.—F. Perin. Sworn to and subscribed before me, this 10th December, 1844, for D. W. Hennen, Clerk; J. G. A. Hoit, Deputy Clerk.

DEFENDANTS' EVIDENCE, NO. ——.

Filed March 17, 1846.

Sale by Catharine Hipp to Daniel Clark, 23d June, 1806, in French.

Vente au C. Nouvelle Orléans, 27 Juin, 1807, est comparue Delle. Catharine Hipp, et a declaré que l'habitation mentionée dans cet acte, se trouve de l'autre bord est une equivocation et qu'elle se trouve de ce bord ici, joignant d'un coté à Paul Chassion, et de l'autre à Etienne Comon, et a signée avec les Srs. J. Bte. Ramirez et Joachim Lozano et nous notaire.

Aujourd'hui vingt trois des mois de Juin de l'an mil huit cent six et la trentième de l'independance Americaine.

Pardevant moi Pierre Pedesclaux, Notaire Public des Etats Unis de l'Amérique à la Nouvelle Orleans, est comparue Dame Catherine P. Hipp, executrice testamentaire et tutrix des enfants mineurs delle N. Jacque Fletcher et autovisée par decret du juge de la Cour Supérieure de ce territoire en datte du dix * juin du present mois. Laquelle par ces presentes declare vendre cedder, quitter cedder et transporter des maintenant et a toujours avec la garantie de tous empechemens généralement quelconque et de tous hypothéques, ce que je certiffie moi notaire annotateur a l'hypothèque seulement a M. Daniel Clark, present et acceptant pour lui et les siens-deux habitations situés dans le district d'Iberville l'une de ce même bord du fleuve ayant sept arpend et vingt cinq toize de face et quarante de profondeur avec les ediffices joignant d'un coté aux terres de Mr. Paul Chaission et de l'autre avec Planchard l'autre habitation située de l'autre bord du fleuve ayant six arpens et douze toises de face et quarante de profondeur joignant d'un coté aux terres de Etienne Couson et de l'autre a Paul Zenon, plus une autre située à l'ancienne ville de Manchac, ayant huit arpens de face et quatre vingt plus ou moins de profondeur joignant d'un coté à la ditte ville et de l'autre Alade Fanchon, les quelles terres appartiennent à la sucss. Bauregard et tout ce quil avait acquis de la succession Fletcher au moyen de l'acte passé par Ramon Canes le quatoze de may dernier autre rapport cette vente ainsi faite et acceptée pour et moyanau la somme de neuf mille piastres que le dit sieur acquereur a payé comptant avant la passation des presentes á la dite dame qui declare reconnait les avoir reçus et transporté au dit sieur Daniel Clark, tout droit de proprieté sur les dittes terres pour par lui en disposer comme de chose à lui propre. Fait et passé en l'etude à la Nouvelle Orleans, le dit jour presence des sieur Jean Baptiste Ramires et Joachim Lozano, temoins qui ont signés avec les

parties et nous notaire, et tout ce quil avait acquis de la succession Bauregard, interligné,

CATHERINE HIPP VE. FLETCHER,
DANIEL CLARK, approuve l'interligne,
CATHEON HIPP Ve. FLETCHER,
JOAQN. LOZANO,
J. BTE. RAMIREZ.
PIERRE PEDESCLAUX,
Nre.

Collationné.

Pour copie conforme à l'original reste en mon Etude pour recours en foi de quoi j'ai signé le present et j'ai apposé le sceau de mon office.

NOUVELLE ORLEANS, le 13 Mars, 1846.

* Huit, le veuvoi approuvé.

[SEAL.] LOUIS T. CAIRE,
Not. Pub.

Translation from the French, of. Filed March 17th, 1846.

Sale from Catharine Hipp to Daniel Clark, 23d June, 1806.

Sale to C.

On the twenty-third of the month of June, of the year eighteen hundred and six, and the thirtieth of the Independence of America: New Orleans, 27th June, 1807, has appeared Mrs. Catherine Hipp, and has declared, that the plantation mentioned in this act, situated on the other side, is an error; and that she is situate on this side, joining on one side Paul Chassion, and on the other Etienne Comon, and has signed with the Messrs. J. Bte. Ramirez, and Joachim Lozano, and me, Notary.

Before me, Pierre Pedesclaux, Notary Public of the United States of America in New Orleans, personally appeared Mistress Catherine F. Hipp, testamentary executrix and tutrix of the minor children of her and Jacque Fletcher, and authorized by decree of the Judge of the Superior Court for this territory, under date of the eighteenth of the present month.

Which appearer declared, that she does by these presents grant, bargain, and sell, convey, transfer, and set over with guarantee, against all evictions generally, of whatever nature soever, and against all incumbrances, except mortgages only, to which I, the recording notary, do certify, to Mr. Daniel Clark, present and accepting for himself and his heirs, two plantations, situate in the District of Iberville, the one on this same side of the river, having seven arpens and twenty-five toize in front and forty in depth, with the buildings, join-

DEFENDANTS' EVIDENCE, NO. ——.

Filed March 17, 1846.

Sale by Catharine Hipp to Daniel Clark, 23d June, 1806, in French.

Vente au C. Nouvelle Orléans, 27 Juin, 1807, est comparue Delle. Catharine Hipp, et a declaré que l'habitation mentionée dans cet acte, se trouve de l'autre bord est une equivocation et qu'elle se trouve de ce bord ici, joignant d'un coté à Paul Chassion, et de l'autre à Etienne Comon, et a signée avec les Srs. J. Bte. Ramirez et Joachim Lozano et nous notaire.

Aujourd'hui vingt trois des mois de Juin de l'an mil huit cent six et la trentième de l'independance Americaine.

Pardevant moi Pierre Pedesclaux, Notaire Public des Etats Unis de l'Amérique à la Nouvelle Orleans, est comparue Dame Catherine P. Hipp, executrice testamentaire et tutrix des enfants mineurs delle N. Jacque Fletcher et autovisée par decret du juge de la Cour Supérieure de ce territoire en datte du dix * juin du present mois. Laquelle par ces presentes declare vendre cedder, quitter cedder et transporter des maintenant et a toujours avec la garantie de tous empechemens généralement quelconque et de tous hypothéques, ce que je certiffie moi notaire annotateur a l'hypothèque seulement a M. Daniel Clark, present et acceptant pour lui et les siens-deux habitations situés dans le district d'Iberville l'une de ce même bord du fleuve ayant sept arpend et vingt cinq toize de face et quarante de profondeur avec les ediffices joignant d'un coté aux terres de Mr. Paul Chaission et de l'autre avec Planchard l'autre habitation située de l'autre bord du fleuve ayant six arpens et douze toises de face et quarante de profondeur joignant d'un coté aux terres de Etienne Couson et de l'autre a Paul Zenon, plus une autre située à l'ancienne ville de Manchac, ayant huit arpens de face et quatre vingt plus ou moins de profondeur joignant d'un coté à la ditte ville et de l'autre Alade Fanchon, les quelles terres appartiennent à la sucss. Bauregard et tout ce quil avait acquis de la succession Fletcher au moyen de l'acte passé par Ramon Canes le quatoze de may dernier autre rapport cette vente ainsi faite et acceptée pour et moyanau la somme de neuf mille piastres que le dit sieur acquereur a payé comptant avant la passation des presentes á la dite dame qui declare reconnait les avoir reçus et transporté au dit sieur Daniel Clark, tout droit de proprieté sur les dittes terres pour par lui en disposer comme de chose à lui propre. Fait et passé en l'etude à la Nouvelle Orleans, le dit jour presence des sieur Jean Baptiste Ramires et Joachim Lozano, temoins qui ont signés avec les

parties et nous notaire, et tout ce quil avait acquis de la succession Bauregard, interligné,

CATHERINE HIPP VE. FLETCHER,
DANIEL CLARK, approuve l'interligne,
CATHEON HIPP Ve. FLETCHER,
JOAQN. LOZANO,
J. BTE. RAMIREZ.
PIERRE PEDESCLAUX,
Nre.

Collationné.

Pour copie conforme à l'original reste en mon Etude pour recours en foi de quoi j'ai signé le present et j'ai apposé le sceau de mon office.

NOUVELLE ORLEANS, le 13 Mars, 1846.

* Huit, le veuvoi approuvé.

[SEAL.] LOUIS T. CAIRE,
Not. Pub.

Translation from the French, of. Filed March 17th, 1846.

Sale from Catharine Hipp to Daniel Clark, 23d June, 1806.

Sale to C.

On the twenty-third of the month of June, of the year eighteen hundred and six, and the thirtieth of the Independence of America: New Orleans, 27th June, 1807, has appeared Mrs. Catherine Hipp, and has declared, that the plantation mentioned in this act, situated on the other side, is an error; and that she is situate on this side, joining on one side Paul Chassion, and on the other Etienne Comon, and has signed with the Messrs. J. Bte. Ramirez, and Joachim Lozano, and me, Notary.

Before me, Pierre Pedesclaux, Notary Public of the United States of America in New Orleans, personally appeared Mistress Catherine F. Hipp, testamentary executrix and tutrix of the minor children of her and Jacque Fletcher, and authorized by decree of the Judge of the Superior Court for this territory, under date of the eighteenth of the present month.

Which appearer declared, that she does by these presents grant, bargain, and sell, convey, transfer, and set over with guarantee, against all evictions generally, of whatever nature soever, and against all incumbrances, except mortgages only, to which I, the recording notary, do certify, to Mr. Daniel Clark, present and accepting for himself and his heirs, two plantations, situate in the District of Iberville, the one on this same side of the river, having seven arpens and twenty-five toize in front and forty in depth, with the buildings, join-

ing on one side the lands of Mr. Paul Chassion, and on the other of Planchard; the other plantation situate on the other side of the river, having six arpens and eleven toises front and forty in depth, joining on one side the lands of Etienne Couson, and on the other of Paul Zenon; further, another situate in the old city of Manchac, having eight arpens in front and eighty, more or less, in depth, joining on one side the said city and on the other Alade Fanchon, and all which he had acquired from the succession of Beauregard; which lands belong to the succession of Fletcher, as appears by act passed before Ramon Canes the fourteenth of May last, otherwise this sale is also made and accepted for the sum of nine thousand dollars, which the said purchaser has paid cash before the execution of these presents to the said mistress, who declared to have received the same, and transfers to the said Mr. Daniel Clark all right of property on the said lands, to dispose of the same as belonging to him in proper. Done and passed in the office at the City of New Orleans, on the said day, in presence of Messrs. Jean Baptiste Ramires and Joachim Lozano, witnesses, who have signed with the parties and me Notary.

CATHERINE HIPP VE. FLETCHER,
DANIEL CLARK,
CATHEON HIPP VE. FLETCHER,
JOAQN. LOZANO, J. BTE. RAMIREZ.
PIERRE PEDESCLAUX, Nre.

A true copy of the original extant on the records of my office. In faith whereof I have signed these presents, and have apposed the seal of my office.

(Signed) LOUIS I. CAIRE,
Notary Public.

Consent.

Filed 15th June, 1848.

FLETCHER'S HEIRS
v.
URSIN JOLLI.

By consent of parties the judgment pro confesso entered in this case is set aside except as against Joseph Walsh, who is not represented by the undersigned counsel of all the other defendants. The rule taken by the said counsel on the complainants to show cause why this bill should not be dismissed on the ground that they are alien enemies is also withdrawn. The defendants, except Joseph Walsh, having this day filed a plea, the oath of the parties thereto is dispensed with.

F. PERNI,
For Complainants.
L. JANIN,
For Defendants.

Plea of Ursin Joly and others.

Filed 15th June, 1848.

To the Honble. Fifth Circuit Court of the United States for the District of Louisiana.

The plea of Ursin Joly, of Marguerite Leblave, the widow of Victor Babin, herein acting as widow in community, and as the natural tutrix of her minor children, Adolphe, Aliza, and Mirza Babin, of Rene Arnous, and of Julien Allain, to the bill of complaint of Felicite Fletcher Hipp, and of Maria Antonia Fletcher Hipp.

These defendants by protestation, not confessing or acknowledging all or any of the matters and things in the bill of said complainants mentioned and contained to be true, in such manner and form as the same are therein set forth and alleged, for plea to said bill, so far as it relates to those defendants, and claims the recovery of any of the lands described in said bill, which now belong to and are in the possession of the defendants, say that they do not own, claim, or possess any other portion of the lands described in said bill, except as follows, viz.:

That this respondent, Ursin Joly, is the owner of a tract of land having three arpents front on the left descending bank of the Mississippi, in the Parish of Iberville, by forty arpents in depth, which is the upper part of the tract of 6 arpents and 11 toises in front by 40 arpents in depth, described in the bill, that said tract of 6 arpents and 11 toises was sold by Catherine Hipp, the mother of the complainant, to Daniel Clark, by an act passed before P. Pedesclaux, Notary Public, in and for the Parish of New Orleans, on June 23d, 1806. That by an act passed before the same notary on the 25th of August, 1807, the said Daniel Clark constituted Joseph Leblave Adone his special attorney in fact for the sale of the lands he had purchased from the said Catherine Hipp as aforesaid; that under this power of attorney the said Joseph Leblave Adone sold the said tract of land of 6 arpents and 11 toises front by 40 arpents in depth, by an act passed before N. Moriam, Parish Judge and ex-officio Notary Public, in and for the Parish of Iberville, on the 11th November, 1807, to Paul Chiasson, for the sum of $3000, payable in 1, 2, 3, 4, and 5 years, the whole of which sum was paid at or about the maturity of the various terms. That by an act passed before the said N. Moriam, on the 18th of March, 1808, the said Paul Cheaison sold the said land to Etienne and Victor Cheaison for the sum of $3000, payable in 1, 2, 3, 4 and 5 years, the whole of which sum was paid by said purchasers, as appears from a notarial receipt given by the said Paul Cheaison on the 5th of June, 1816; that a verbal partition of said land having taken place between the said Etienne and Victor Cheaison, by which the upper

three arpents front fell to the share of Etienne Cheaison, and said Etienne Cheaison having departed this life, said tract of three arpents front by 40 arpents in depth was adjudicated to Julia Sharp, the widow of said Etienne Cheaison, by an order of the Probate Court of the Parish of Iberville, dated the 14th of September, 1822, granted upon the advice of a family meeting; that thereafter the said Julia Sharp and her estate paid to the heirs of said Etienne Cheaison the price of said adjudication; that the said Julia Sharp having died, said land was adjudicated, at a sale ordered by the Probate Court of the Parish of Iberville, to Fergus Duplantier, in May 28th, 1838, for the sum of $3250, payable as follows, viz.: $1980, with interest from the 8th of March, 1833, till the 28th of March, 1839, payable on the 28th of May, 1839; and the remainder, one-third in all March, 1839, one-third on the 28th of May, 1839, and one-third in all March, 1840; all which sums were paid at or about the time of their maturity, that by an act passed on the 19th of June, 1839, before John Dulton, Parish Judge, in and for the Parish of Iberville, and ex-officio Notary Public, the said Fergus Duplantier sold the said tract of land, with warranty only against his own acts and deeds, to John C. Beasley, for the sum of $3256, which was paid in cash at the time of the sale, and that the said John C. Beasley having also died, said land was again sold by order of the Court of Probates of the Parish of Iberville, and adjudicated to this defendant, Ursin Joly, on the 16th of April, 1842, for the sum of $3005, and payable in March, 1843, 1844, and 1845, the whole of which sums has since been paid.

And the defendant, Marguerite Leblave, the widow of Victor Babin, acting herein as widow in community and as tutrix of her children, Adolphe, Eliza, and Mirza Babin, further show. That the lower part of said tract of six arpents and eleven toises front, which lower part had also three arpents in front more or less, by forty arpents in depth, having as aforesaid fallen to the lot of Victor Cheaison, in the aforesaid verbal partition between himself and the said Etienne Cheaison, the said Victor Cheaison sold the same, by an act passed before John Dulton, Parish Judge and ex-officio Notary Public, in and for the Parish of Iberville, on the 2d of October, 1819, to Leonora Allain for $3600, which were paid in cash. That by an act passed before the same Parish Judge, on the 18th of January, 1830, the said Leonora Allain sold the said tract to William Maddor, for the sum of $3000, payable in March, 1830, 1831, and 1832, the whole of which sum was paid at or about the stipulated time. That the said William Maddor having died, the said tract of land was sold by order of the Court of Probates, of the Parish of Iberville, and adjudicated on the 16th of October, 1836, to Dominique Labauve, for the sum of $1505, payable one year after date, which sum was paid at maturity. That by an act passed on the 13th of October, 1836, before Louis Petit, Notary Public, in and for the Parish of Iberville, the said Dominique Labauve sold one undivided half of said tract of land to Victor Babin, in consideration of said

Victor Babin's assuming to pay one half of the price of $1505, which the said Labauve had bound himself to pay, the said sale being without warranty, the vendor transferring only such title as he had acquired. That by another act passed before the same Notary, Louis Petit, the said Dominique Labauve sold his remaining half of said tract of land to Joseph Walsh. That by an act of partition, passed on the 9th of June, 1840, before the same Notary Petit, the said Victor Babin and Joseph Walsh made a partition in kind of said tract of land, the said Victor Babin receiving the upper half or 1½ arpents, and the said Joseph Walsh receiving the lower half or 1½ arpents. That the said Victor Babin died on the 25th of July, 1844, leaving this defendant, Marguerite Leblave, his widow, and three minor children, the issue of his marriage with the said defendant, to wit: Adolphe, Eliza, and Mirza Babin, and that on the 25th of January, 1845, the Probate Court of the Parish of Iberville confirmed the said defendant as natural tutrix of her said minor children.

The defendants Rene Arnous, Julien Allain, and Marguerite Leblave, the widow of Victor Babin, and tutrix of her aforesaid minor children, show that they are the owners of the tract of land of seven arpents and twenty-five toises front on the Mississippi River, by forty arpents in depth, mentioned in the bill, and have respectively acquired various parts thereof as follows, viz.:

The said Catharine Hipp sold the same to said Daniel Clark, by the aforesaid act of sale of June 23d, 1806; the said Clark sold the same previous to 1810 to Joseph Leblave Adone, who paid the stipulated price; the said Joseph Leblave Adone sold the upper four arpents of said tract of land to Constant Viel, by an act under private signature, dated the 31st of October, 1822, and acknowledged and deposited by the parties thereto before N. Moriam, Parish Judge and ex-officio Notary Public, on the 4th of November, 1822; that the price was the sum of $5000, payable in 1823, 4, 5, 6, and 7; that the said Constant Viel was condemned to pay said sum of money with interest, to the heirs of said Joseph Leblave Adone, by a judgment rendered by the Fourth District Court, of the State of Louisiana, holding sessions in and for the Parish of Iberville, on the 29th of April, 1828, and thereafter confirmed by the Supreme Court of said State; that an execution having issued under said judgment, said Constant Viel made said payment into the hands of the sheriff on the 4th of September, 1829. That by an act under private signature, executed at New Orleans, on the 31st of December, 1829, the said Constant Viel, Vincent Pedrou, and this defendant, Rene Arnous, formed a partnership, into which the said Constant Viel put the aforesaid tract of land as his contribution to the partnership funds. That the said Vincent Pedrou having shortly thereafter died, his third in said tract of land was inherited by this defendant Arnous, in conformity with the will of the said Pedrou, which was admitted to Probate and ordered to be executed by the Probate Court of the Parish

of Orleans. That an act passed before the aforesaid Notary, Louis Petit, on the 10th of November, 1836, the said Constant Viel sold his third in the aforesaid tract of four arpents front by forty arpents in depth, to this defendant Rene Arnous, together with other property, for the sum of $20,000, payable in March, 1838, 1839, 1840, 1841, and 1842, in annual sums of $4000, all of which were punctually paid by the said defendant.

The defendants, Julien Allain, and Marguerite Leblave, the widow of Victor Babin, acting as widow in community, and as tutrix of her aforesaid minor children, show that they are now the joint proprietors of the remaining part of said tract of 7 arpents and 25 toises front, to wit, of 3 arpents and 25 toises; that the said Joseph Leblave Adone, after having purchased the entire tract, as aforesaid, from Daniel Clark, sold said 3 arpents and 27 toises and 3 feet to Joseph Leblave, his son, by an act passed before N. Meriam, Parish Judge and ex-officio Notary as aforesaid, on the 1st of May, 1810, for the sum of $2000, payable in 1, 2, 3, 4 and 5 years. That said Joseph Leblave, the son, having died, said land was sold under a decree of the Probate Court of Iberville on the 13th of December, 1817, and adjudicated to Joseph Leblave Adone, for the sum of $3500, payable $500 in March, 1818, and the remainder in March, 1819, 1820, and 1821. That by an act under private signature, dated the 26th of January, 1818, which was acknowledged by all the parties thereto, and deposited by an act passed before John Dulton, then Parish Judge and ex-officio Notary Public in and for the Parish of Iberville, on the 2d of March, 1818, the said Joseph Leblave Adone sold to Victor Blanchard and Olivier Blanchard, the said tract of 3 arpents and 25 toises front into 40 arpents in depth, for the sum of $3000, of which $1000 were payable in March, 1818, and the remaining $2000 were payable on the terms of payment of the aforesaid adjudication by the estate of Joseph Leblave, the son, to Joseph Leblave Adone. That the price of the various aforesaid sales was paid at or about the time when it matured; that immediately thereafter a verbal partition took place between the said Olivier and the said Victor Blanchard, by which the said Olivier received the upper two arpents, and the said Victor Blanchard the remaining 1 arpent and 25 toises. That very soon thereafter, the said Victor Blanchard departed this life, leaving a will, which was admitted to probate, and ordered to be executed by the said John Dulton, as Judge of the Court of Probates of the Parish of Iberville, on the 19th of March, 1818, and from which it appears that he bequeathed said tract of 2 arpents front by 40 arpents in depth, to Thomassion Blanchard; that said Thomassion Blanchard, having also died, the said two arpents tract was adjudicated, on the 6th of April, 1841, at a sale of the property of the succession of said Thomassion Blanchard, to this defendant, Julien Allain. That the lowest part of said tract of 7 arpents and 25 toises, to wit: the tract of 1 arpent and 25 toises, which, in the above-mentioned partition between Olivier

and Victor Blanchard, fell to the share of said Victor Blanchard—that the said Victor Blanchard having died, leaving 7 children and heirs, they made, on the 24th of December, 1836, an inventory of the property of his estate by an act passed before Louis Petit, Notary Public, the said heirs being then all of age; that on the same day, and by an act passed before the same Notary, P. Volant Blanchard and Victorine Blanchard, two of the said heirs, sold their hereditary share in their father's estate to their brother and co-heir, Thomassin Blanchard, for the sum of $16,000, cash. That by an act passed before the same Notary, on the 17th of December, 1839, Jean Adrien Blanchard, another of the said heirs, sold his share in the said estate to the said Thomassin Blanchard, for the sum of eight thousand two hundred dollars cash; that by an act passed before the same Notary, on the 25th of January, 1840, Joachim Blanchard, another of the said heirs, sold his share in the said estate to Elizabeth Blanchard, his sister and co-heir, for $8,200, cash. That by reason of the aforesaid sales, the estate of the said Victor Blanchard was the property of said Thomassin Blanchard, in the proportion of four seventh parts, of the said Elizabeth Blanchard in the proportion of two sevenths, and of Appelline Blanchard, the wife of Bernard Allain, another of the children, and heir of the said Victor Blanchard, in the proportion of one seventh. That the said Thomassin Blanchard having also died, a probate sale was ordered both of the property belonging to the estate of said Thomassin Blanchard exclusively, as of the property which, as derived from the estate of Victor Blanchard, he held jointly with the said Elizabeth Blanchard, and with Appelline Blanchard, the wife of Bernard Allain; that at said sale, which was made on the 6th of April, 1841, by John Dulton, Parish Judge of the Parish of Iberville, the said Julien Allain became the purchaser, both of the said tract of 2 arpents front by 40 arpents in depth, belonging to the late Thomassin Blanchard exclusively (he having inherited it from Olivier Blanchard), as also of the tract of 1 arpent and 25 toises proceeding from the estate of Victor Blanchard, and of other property proceeding from the same estate, the whole being adjudicated to said Julien Allain, for the sum of eighteen thousand dollars, payable ¼ in March, 1842, ¼ in March, 1843, ¼ in March, 1844, ¼ in March, 1845. That by an act passed on the 30th of April, 1841, before the same Notary, the said Julien Allain sold one undivided half of his said purchase to the said Victor Babin, who assumed to pay one half of the price of eighteen thousand dollars; that since then the whole of said price has been paid by the said Julien Allain; and the estate of Victor Babin, and that the said Victor Babin having departed this life, his estate was inherited by his aforesaid three minor children, Adolphe, Eliza, and Mirza Blanchard, who are herein represented by Marguerite Leblave, their mother and natural tutrix.

These defendants aver that true it is, that the complainants instituted, on the 31st of March, 1824, five suits in the Fourth Judicial

District Court of the State of Louisiana, in and for the Parish of Iberville, against Constant Viel, Simon Allain, Thomassin Blanchard, Julia Sharp, and Victor Blanchard, who then were the owners and possessors of various portions of the land herein described, the object of which suits was to claim the said lands, but that hardly any steps being taken by the plaintiffs in said suits, and no progress whatever being made in them, and the plaintiffs not appearing at the September term of 1835, on the days when the said cases were called up for trial, the said plaintiffs were non-suited.

These defendants aver that all the successive owners and vendors of the lands herein described, from the said Daniel Clark to these defendants, were in possession of said lands; that all said vendors were seized, or pretended to be seized, of said lands in fee simple; that the successive purchasers believed that their said vendors were seized in fee simple; that in all cases the purchase-money was bona fide and truly paid; that up to the time when said suits were filed in the Fourth District Court of the State of Louisiana, for the Parish of Iberville, the various above-named vendors and purchasers of said lands had no notice whatever of the claim set up in the bill to which this plea is made; that those of said purchasers who had purchased previous to the institution of said suits, had paid all the purchase-money due by them at and before the time when said suits were instituted, and that they all were bona fide purchasers for a good and valuable consideration, and without any notice of said claim; that those who purchased subsequently to the dismissal of said suits, in September and October, 1835, had just reasons to believe that the complainants, who had so long neglected to proceed with said suits, had ascertained that they had no just and legal foundation, or that they had abandoned them; that said subsequent purchasers verily believed that the claims of the complainants would not again be renewed; that accordingly, they also were bona fide purchasers for a valuable consideration, and without any notice that the said claims still existed and would be reasserted; that all the sales mentioned in this plea were made with full warranty, with some exceptions, expressly specified. All which matters and things these defendants do aver and plead in bar to so much of the bill of the complainants as relates to these defendants, and tends to claim the recovery of the above-described land belonging to these defendants; and pray the judgment of this Honorable Court, whether they should make any further answer to said bill; and these defendants, not waiving their said plea, but relying thereon and for better supporting the same, for answer say:—That they verily believe, that the various vendors and purchasers herein named, up to the time of the filing of the aforesaid suits in 1824, never had any notice whatever, either express or implied, of the claims now set up by the complainants, or of the facts and circumstances mentioned in said bill, from which said claims are said to arise; and that the various vendors and purchasers

since the dismissal of the aforesaid suits in 1835, and these defendants themselves, never apprehended, or had any notice whatever, either direct or implied, that the suits had not been finally abandoned, or that the same claims would again be set up, and that, therefore, they all are likewise bona fide purchasers for a valuable consideration, actually paid, so far as due, before this bill was filed; and these defendants therefore plead the aforesaid purchases for valuable considerations, without notice to the bill of the complainants, so far as the same refers to them, and to the aforesaid lands owned by them, and prays the judgment of this honorable Court, whether they should be compelled to make any further answer to said bill, and pray to be hence dismissed with their reasonable costs and charges. L. Janin, of counsel. The undersigned counsel hereby certifies, that in his opinion, the above plea is well founded in point of law. L. Janin.

Minutes. Friday, 14th June, A.D. 1850. Present: Hon. T. H. McCaleb, District Judge.

FLETCHER'S HEIRS
v.
URSIN JOLLI. } 1285.

The plea of bona fide purchaser for valuable consideration without notice, herein pleaded, having been submitted by consent of parties on a former day, and the Court having considered the same, doth now order, adjudge, and decree, that said plea be overruled; reserving, however, to defendant the right to avail himself of said plea in his answer; further ordered that defendant pay the costs of said plea and answer, on or before rule day, in November next.

Answer and Pleas of Ursin Joly et als.

Filed 2d December, 1850, with 24 Exhibits.

FLETCHER'S HEIRS
v.
URSIN JOLY & als. } In Chancery.

United States Circuit Court, Eastern District of Louisiana.

The answer of Ursin Joly, of Marguerite Le Blanc, the widow of Victor Babin, herein acting as widow in community and as natural tutrix of her minor children Adolph, Eliza, and Mirza Babin, of Rene Arnous, and of Julien Allain, to the original and amended bill of complaint of Felecite Fletcher Hipp, and Maria Antonia Fletcher Hipp, for themselves, and on behalf of Augustin Cuesta, Juana Cuesta, and Felicite Cuesta, the forced heirs of Adelaide Fletcher Hipp, complainants.

The defendants, now and at all times hereinafter, saving and re-

serving unto themselves, all benefit and advantage of exception which can or may be had or taken, to the many errors, uncertainties, and other imperfections in the said complainants' original and amended bill of complaint contained, for answer to so much and such parts thereof as these defendants are advised, is or are material or necessary for them to make answer unto, these defendants, answering to the best of their knowledge, remembrance, and belief, say:

That they admit that the said James Fletcher purchased the tracts of land described in complainants' bill from Don Nicholas Verbois, Basques Bahamonda, and the succession of Beauregard, by acts passed before Pierre Pedesclaux, Notary Public, in 1797, 1798 and 1800; that the said James Fletcher, on the 13th of March, 1802, made his last will and testament in due form of law, which was, after the death of said James Fletcher, admitted to probate and its execution ordered by the Judge of the Superior Court of the Territory of Orleans, and that by the said will, he, the said James Fletcher, devised and bequeathed to the said complainants, the said Adelaide their sister, and the said Catharine Hipp, their mother, share and share alike, all the property of which he died seized, and made the said Catharine Hipp executrix thereof under certain conditions. And that the said James Fletcher was married to the said Catharine Hipp, and that at his death he left no other children than the complainants and their sister, the said Adelaide Fletcher Hipp, the issue of his said marriage with the said Catharine Hipp.

These defendants further answering says, that at the time of filing the bill of complaint in this case, they were in possession of separate portions of the said tracts of land described in said bill, and claimed title thereto as owner in fee simple, respectively of the same as follows, to wit: the defendant Ursin Joly, of a tract of land having three arpents front, on the left descending bank of the Mississippi River, by forty arpents in depth, and which is the upper part of the tract of six arpents and eleven toises front described in the bill. The defendant Marguerite Le Blanc, widow of Victor Babin, in her capacity of widow in community and natural tutrix of her minor children, of a tract of one arpent and a half front on the Mississippi River, by forty arpents in depth, being also a part of the said tract of six arpents eleven toises front, and bounded above by the land now possessed by Ursin Joly. The defendant Rene Arnous, of a tract of land having four arpents front on the Mississippi River, by forty in depth, and which is the upper part of the tract of seven arpents and twenty-five toises front described in the bill. Andthe defendants Julien Allain and Marguerite Le Blanc, widow of Victor Babin, in her capacity of widow in community and natural tutrix of her minor children, jointly, of the remainder of the said tract of seven arpents twenty-five toises front, to wit: of three arpents and twenty-five toises front, and forty arpents deep, of the same; and these defendants say, that they do not possess or claim any other portion of the lands described in the said bill.

And these defendants further answering deny that three-fourths of the said tracts of land described in complainants' bill, were vested in complainants and their sister Adelaide, by the dispositions contained in the said last will and testament of the said James Fletcher. And further answering they say, that the said James Fletcher was married to the said Catherine Hipp on the 19th of March, 1794, and that the said tracts having been acquired by the said James Fletcher, by purchase, in 1797, 1798 and 1800, as alleged in complainants' bill, the same were acquired by him, the said James Fletcher, after his marriage with the said Catherine Hipp, and during its continuance; that there was a community of acquests and gains between the said James Fletcher, and the said Catherine Hipp his wife, when the said tracts of land were respectively acquired by him the said James Fletcher. That by law the ownership of the said tracts of land was vested in the said community; that one undivided half of the same was the property of the said Catherine Hipp, as partners in the said community. And that the said James Fletcher could only dispose of one undivided half of the same by testament.

And these defendants further answering says, that the said Catherine Hipp, after the dissolution of the said marriage between the said James Fletcher and herself, continued to be and was the owner of one undivided half of the said tracts of land purchased as aforesaid in her capacity of surviving wife and partner in the community, and that she was the owner of one undivided fourth part of the other undivided half of the same, in virtue of the disposition in her favor contained in the last will and testament of the said James Fletcher; that as the legal owner of the said one-half and of the said one-fourth, making five-eighths of the said tracts, she was in law authorized to sell and convey a good title to the same, and that by the sale of the said tracts of land made by her to the said Daniel Clark, by public act passed on the 23d day of June, 1806, before Pierre Pedesclaux, Notary Public, all her own right, title, and interest in and to the said tracts of land, was vested in the said Daniel Clark, who thereby acquired a legal title to the undivided five-eighths of the said tracts of lands.

And these defendants further answering say, that by a decree of the Superior Court of the Territory of Orleans, rendered on the 18th of June, 1806, on the petition of the said Catherine Hipp, executrix of the said James Fletcher, then deceased, the said Catherine Hipp was empowered to sell and convey the said tracts of land for such price as might be obtained therefor, and to receive the price. That in pursuance of the authority given in said decree, the said Catherine Hipp, by public act passed on the 23d of June, 1806, before Pierre Pedesclaux, Notary Public, and describing herself as testamentary executrix of the said James Fletcher, and tutrix of their minor children, sold the said two tracts of land to the said Daniel Clark, for the price of $9000, paid before the passage of the act, which said

public act was a conveyance to the said Daniel Clark of the said tracts of land, in due form of law, vested the legal title thereto in him.

And these defendants further answering deny that there was any fraud on the part of the said Daniel Clark, as charged in complainants' bill, and say that they have no knowledge, information, or belief of any fraud in the said Daniel Clark in relation to the said sale. And they further deny that the said decree of the said Superior Court, made on the 18th of June, 1806, was contrary to the Spanish law, or that the said sale, made under the same, was invalid either because it was made at public auction or without advertisement or public notice.

These defendants further answering say, that Paul Chiasson purchased the said tract of land of six arpents and eleven toises front by forty in depth, described in the bill, and passed and claimed as owner by Ursin Joly and the widow of Victor Babin, two of these defendants, from the said Daniel Clark, by public act passed before N. Meriam, Parish Judge of the parish of Iberville, ex-officio Notary Public therein, on the 11th of November, 1807, for the sum of three thousand dollars, payable in 1, 2, 3, 4, and 5 years, the whole of which was paid at or about the times when the instalments respectively fell due. That public acts by the laws of Louisiana remain of record in the offices of the Notaries Public before whom they are passed, and that copies of the same only are delivered to parties. That the said public act was a conveyance to the said Paul Chiasson in due form of law, by the said Daniel Clark, of the said tract of land; that the said Daniel Clark was at the time of the execution of the said conveyance in possession of the said tract of land, and was seized or pretended to be seized thereof in fee simple. That the said Paul Chiasson believed the said Daniel Clark his vendor was seized of the same in fee simple at the time of accepting the said conveyance and at the time of paying the instalments of the said price respectively. And these defendants aver that the said Paul Chiasson, at the time he purchased the said tract of land, and accepted the conveyance thereof at the time he paid the purchase-money therefor, had no notice of any right, title, or claim, in the complainants or the said Adelaide, their sister, in or to the same, and that he the said Paul Chiasson did not at the time he purchased the said tract of land and accepted the said conveyance thereof, or at the time he paid the purchase-money therefor, have any knowledge, information, or belief of the date of the said decree of the said Superior Court, or that it was contrary to the Spanish or any other law in force, or that the said sale by the said Catharine Hipp to the said Daniel Clark was made by her in a representative capacity, or that the sale was made by her at private sale, or that it was made without advertisement or public notice, and that accordingly the said Paul Chiasson was a purchaser in good faith for a valuable consideration without notice;

that afterwards Etienne Chiasson and Victor Chiasson purchased the said tract of land from the said Paul Chiasson by public act passed before the said Meriam, Parish Judge and ex-officio Notary Public as aforesaid, on the 18th of March, 1808, for the sum of $3000, payable in 1, 2, 3, 4 and 5 years, the whole of which was paid by said purchasers on or before the 5th of June, 1816, as shown by a Notarial receipt given by the said Paul Chiasson on that day; that the said public act of sale was a conveyance to the said Etienne and Victor Chiasson by the said Paul Chiasson in due form of law. That the said Paul Chiasson was at the time of the execution of the said conveyance in possession of the said tract of land, and was seized or pretended to be seized thereof in fee simple. That the said Etienne and Victor Chiasson believed the said Paul Chiasson was seized of the same in fee simple at the time of accepting the said conveyance and at the time of paying the said purchase-money.

And these defendants aver, that the said Etienne and Victor Chiasson, at the time they purchased the said tract of land and accepted a conveyance thereof, and at the time they paid the purchase-money therefor, had no notice of any right, title, or claim, in the complainants or the said Adelaide, their sister, in or to the same; and that the said Etienne and Victor Chiasson, or either of them, did not, at the time they purchased the said tract of land and accepted the said conveyance thereof, or at the time they paid the purchase-money therefor, have any information, knowledge, or belief, of the date of the said decree of the said Superior Court, or that it was contrary to the Spanish, or any other law in force, or of the date of the said sale by the said Catherine Hipp to the said Daniel Clark, or that the same was made by her in a representative capacity, or that the sale was made by her at private sale, or that it was made without advertisement or public notice, or that the said Daniel Clark derived title to the said tract of land, or any part thereof, through or from the said Catherine Hipp, or from the succession of the said James Fletcher, and that, accordingly, they the said Etienne and Victor Chiasson were purchasers in good faith for a valuable consideration without notice. And that afterwards, a partition of the said land having been made by parole, between the said Etienne and Victor Chiasson, by which the upper three arpents front by forty deep were allotted to the said Etienne Chiasson, and the lower three arpents front, more or less, by forty deep, were allotted to Victor Chiasson, the said Victor Chiasson sold the said lower tract of three arpents, more or less, so allotted to him, to Simeon Allain, by public act passed on the 2d of October, 1819, before John Dulton, Parish Judge of the Parish of Iberville, and ex-officio Notary Public therein, for the price of $3600, which was paid in cash. That the said public act was a conveyance to the said Simeon Allain by the said Victor Chiasson in due form of law. That the said Victor Chiasson was, at the time of the execution of the said conveyance, in possession of

the said tract of land, and was seized, or pretended to be seized thereof in fee-simple. That the said Simeon Allain believed that the said Victor Chiasson, his vendor, was seized of the same in fee-simple at the time of accepting the said conveyance, and at the time of paying the said purchase-money. And these defendants aver, that the said Simeon Allain did not, at the time he purchased the said tract of land, and accepted the said conveyance thereof, and paid the said purchase-money therefor, have any knowledge, information, or belief, of the date of the said decree of the said Superior Court, or that it was contrary to the Spanish or any other law in force, or of the date of the said sale by the said Catherine Hipp to the said Daniel Clark, or that the same was made by her in a representative capacity, or that the sale was made at private sale, or that it was made without advertisement or public notice, or that the title to the said land was derived through or from the said Catherine Hipp or from the succession of the said James Fletcher, and that accordingly the said Simeon Allain was a purchaser in good faith for a valuable consideration without notice. That by a public act, passed before the said John Dulton, Parish Judge and ex-officio Notary Public as aforesaid, on the 18th of January, 1830, the said Simeon Allain sold the said tract to William Maddox for the price of $3000, payable as stated in said act. That the said William Maddox having died, the said tract of land was sold by order of the Court of Probates of the Parish of Iberville, and adjudicated on the 16th of October, 1836, to Dominique Labauve, for the sum of $1505, payable one year after date. That by a public act, passed before Louis Petit, Notary Public, in the Parish of Iberville, on the 13th of October, 1836, the said Dominique Labauve sold one undivided half of the said tract of land to Victor Babin, for the price and on the terms stated in the said act, and that the said Victor Babin having died, the defendant, Marguerite Le Blane, as widow in community of the said Victor Babin and her said minor children, have succeeded to his rights. And these defendants now aver, that the said Paul Chiasson, being a purchaser in good faith for a valuable consideration without notice, was entitled to the *to the* protection of this Court, and could have plead his said purchase in bar to the complainants' bill; and that the said Etienne and Victor Chiasson being also purchasers in good faith for a valuable consideration without notice, were also entitled to the protection of this Court, and could have plead their said purchase in bar to the complainants' bill; and that the said Simeon Allain, being a purchaser in good faith for a valuable consideration without notice, was entitled to plead his said purchase in bar to the complainants' bill; and that the said Victor Babin, to whose rights the defendant, Marguerite Le Blane, as widow in community and as tutrix of her minor children, has succeeded, being a purchaser, deriving title and holding under the said Paul Chiasson, and the said Etienne and Victor Chiasson, and the said Simeon Allain, she, the said Marguerite

Le Blane, is in like manner entitled to the protection of the Court, and to the benefit of the said purchasers in good faith for a valuable consideration without notice, made by the said Paul Chiasson, and the said Etienne and Victor Chiasson, and the said Simeon Allain, and that the said defendant, Marguerite Le Blane, does therefore now plead the same in bar to so much of the said bill of complaint as relates to the said defendant in her capacity of widow in community of the said Victor Babin, and of natural tutrix of his minor children. And the said Etienne Chiasson having departed this life, the said tract of land of three arpents by forty arpents deep, allotted to him in the said partition between him and the said Victor Chiasson, was adjudicated to Julia Sharp, the surviving wife of the said Etienne Chiasson, by an order of the Probate Court of the Parish of Iberville, dated on the 14th of September, 1822, granted upon the advice of a family meeting. That the said Julia Sharp having died, the said land was adjudicated, at a sale made under the authority of the Court of Probates of the Parish of Iberville, to Fergus Duplantier, on the 28th of May, 1838, for the sum of $3250, payable as stated in the said adjudication. That by an act passed before John Dulton, Parish Judge of the Parish of Iberville, and ex-officio Notary Public therein, on the 19th of June, 1839, the said Fergus Duplantier sold the said tract of land to John C. Beasley for the sum of $3256, which was paid in cash at the time of the sale. And that said John C. Beasley having died, the said tract of land was sold under the authority of the Court of Probates of the said Parish of Iberville, and adjudicated to the defendant, Ursin Joly, on the 16th of April, 1842, for the sum of $3005, payable in March, 1843, 1844, and 1845, the whole of which has been paid.

And these defendants aver that the said defendant, Ursin Joly, being a purchaser deriving title and holding under the said Paul Chiasson and the said Etienne and Victor Chiasson, is also in like manner entitled to the protection of the Court and to the benefit of the said purchasers in good faith for a valuable consideration without notice, made by the said Paul Chiasson, and by the said Etienne and Victor Chiasson, and that the said defendant does now therefore plead the same in bar to so much of the bill of complaint as relates to the said defendant. And these defendants further answering and say that Joseph Le Blane purchased the said tract of land of 7 arpents and 25 toises front by forty arpents in depth, described in the bill and possessed and claimed as owner by Réné Arnous, and Julien Allain, and Marguerite Le Blane, the widow of Victor Babin, in the capacity of widow in community and natural tutrix of the minor children of the said Victor Babin, from the said Daniel Clark, by public act passed on the 27th of August, 1807, before Pierre Pedesclaux, a Notary Public in the City of New Orleans. That the said public act was a conveyance in due form of law to the said Joseph Le Blane, by the said Daniel Clark, of the said tract of land

in due form of law. That the said Daniel Clark was at the time of the execution of the said conveyance in possession of the said tract of land, and was seized or pretended to be seized thereof in fee simple. That the said Joseph Le Blane believed the said Daniel Clark, his vendor, was seized of the same in fee simple at the time of accepting the said conveyance, and at the time of paying the purchase-money. And these defendants aver that the said Joseph Le Blane at the time he purchased the said tract of land, and accepted the conveyance thereof, and at the time he paid the purchase-money therefor, had no notice of any right, title, or claim in the complainants, or the said Adelaide, the sister, in or to the same, and that he, the said Joseph Le Blane, did not at the time he purchased the said tract of land and accepted the said conveyance thereof, or at the time he paid the purchase-money therefor, have knowledge, information, or belief, of the date of the said decree of the said Superior Court, or that it was contrary to the Spanish or any other law in force, or that the said sale, by the said Catherine Hipp to the said Daniel Clark was made by her in a representative capacity, or that the sale was made by her at private sale, or that it was made without advertisement or public notice. And that accordingly the said Joseph Le Blane was a purchaser in good faith for a valuable consideration. That afterwards Joseph Le Blane purchased three arpents twenty-seven toises and three feet, more or less, front, by forty arpents deep, of the said tract of land, and being the upper part of the same, from the said Joseph Le Blane, called Adone by public act passed before N. Meriam, Parish Judge of the Parish of Iberville, and ex-officio Notary Public therein, on the 1st of May, 1810, for the sum of $2000, payable in 1, 2, 3, 4, and 5 years, which was paid at or about the times the instalments respectively fell due. That the said act was a conveyance to the said Joseph Le Blane from the said Joseph Le Blane called Adon, of the said tract of land in due form of law; that the said Joseph Le Blane called Adan was at the time of the execution of the said conveyance in possession of the said tract of land, and was seized, or pretended to be seized, thereof in fee simple. That the said Joseph Le Blane believed the said Joseph Le Blane Adoin, his vendor, was seized of the same in fee simple at the time of accepting the conveyance thereof and at the time he paid the purchase-money therefor. And these defendants aver that the said Joseph Le Blane, at the time he purchased the said tract of land and accepted the conveyance thereof, and at the time he paid the purchase-money therefor, had no notice of any right, title, or claim in the complainants, or the said Adelaide their sister, in or to the same, and that he, the said Joseph Le Blane, did not at the time he purchased the said tract of land and accepted the conveyance thereof, or at the time he paid the purchase-money therefor, have any knowledge, or information, or belief of the date of the said decree of the said Superior Court, or that it was contrary to the Spanish or any other law in force, or that the said

sale by the said Catherine Hipp to the said Daniel Clark was made by her in a representative capacity, or that the sale was made by her at private sale, or that it was made without advertisement or public notice, or that there was fraud in the said Daniel Clark, or in relation to the purchase of said land made by him, and that accordingly the said Joseph Le Blane was a purchaser in good faith for a valuable consideration without notice.

That afterwards the said Joseph Le Blane having died, the said tract of land was sold, under a decree of the Court of Probate of the Parish of Iberville, and adjudicated to Joseph Le Blane Adone, for the sum of $3500, payable $500 in March, 1818, and the remainder in March, 1819, 1820, and 1821. That by an act under private signature, dated the 26th of January, 1818, which was acknowledged by all the parties thereto, and deposited by an act passed before John Dulton, Parish Judge of the Parish of Iberville, and ex-officio Notary Public therein, on the 2d of March, 1818, the said Joseph Le Blane, called Adan, sold to Victor Blanchard and Olivier Blanchard the said tract of land, for the sum of $3000, payable $1000 in March, 1818, and the remaining $2000 on the terms of said adjudication, to the said Joseph Le Blane, called Adan, which said instalments were all paid as they fell due. That a partition of the said tract of land was made by parole between the said Olivier and Victor Blanchard, by which the said Olivier Blanchard took the upper two arpents front, and the said Victor Blanchard the remaining one arpent and twenty-five toises front. That soon after the said Victor Blanchard departed this life, leaving a will, which was admitted to probate, and ordered to be executed by a decree of the Court of Probates of the Parish of Iberville, on the 19th of March, 1818, by which he bequeathed the said tract of land of 2 arpents front by 40 in depth, to Thomassin Blanchard. That the said Thomassin Blanchard having also died, the said tract of two arpents front by forty deep, was adjudicated, on the 6th of April, 1841, under a decree of the Court of Probates of the Parish of Iberville, to the defendant, Julien Allain. That the said Victor Blanchard having died, leaving seven children and heirs, the other tract of one arpent and twenty-five toises front, which was allotted to him in the said partition between him and the said Olivier Blanchard, fell to his said children and heirs. That the said heirs being then all of age, they made an inventory of the property belonging to the estate of the said Victor Blanchard, by an act passed before Louis Petit, Notary Public, on the 24th of December, 1836. That on the same day, and by an act passed before the same Notary Public, Valmant Blanchard and Victor Blanchard, two of the said heirs, sold their hereditary shares in their father's estate, to their brother and co-heir, Thomisson Blanchard, for the sum of 16,000 cash. That by an act passed before the same Notary, on the 17th of December, 1839, Jean A. Blanchard, another of the said heirs, sold his share in the estate to the Thomassin Blanchard, for the sum of $8200 cash. That by an

act passed before the same Notary, on the 25th of January, 1840, Joachim Blanchard, another of the said heirs, sold his share in the said estate to Elizabeth Blanchard, his sister and co-heir, for $8200 cash. That by reason of the aforesaid sales by the said heirs, the estate of the said Victor Blanchard was the property of said Thomassin Blanchard, in the proportion of four-sevenths, of the said Elizabeth Blanchard in the proportion of two-sevenths, and of Appoline Blanchard, the wife of Bernard Allain, another of the children and heirs of the said Victor Blanchard, in the proportion of one-seventh. That the said Thomassin Blanchard having also died, a probate sale was ordered, both of the property belonging to the estate of the said Thomassin Blanchard, exclusively, and of the property which, as derived from the estate of Victor Blanchard, he held jointly with the said Elizabeth Blanchard, and with the said Appoline Blanchard, the wife of Bernard Allain.

That at the said sale, which was made on the 6th of April, 1841, by John Dulton, Parish Judge of the Parish of Iberville, the said Julien Allain became the purchaser both of the said tract of two arpents front by forty arpents deep, belonging to the said Thomassin Blanchard, exclusively (he having inherited the same from the said Olivier Blanchard), as also of the tract of one arpent and twenty-five toises, proceeding from the estate of the said Victor Blanchard, and of other property proceeding from the same estate, the whole being adjudicated to the said Julien Allain, for the sum of $18,000, payable by fourth in March, 1842, 1843, 1844, and 1845. That by an act passed on the 30th April, 1841, before the same Notary, the said Julien Allain sold an undivided half of his said purchase to the said Victor Babin, who assumed to pay one-half of the said $18,000, the price of the said adjudication; the whole of which said price has been paid by the said Julien Allain and the estate of the said Victor Babin. And that the said Victor Babin having departed this life, his rights in and to the said tract of land fell to and are vested in the said Marguerite Le Blane, his widow, and his minor heirs, who are represented by her as their natural tutrix. And these defendants now aver, that the said Joseph Le Blane, called Adan, being a purchaser in good faith, for a valuable consideration, without notice, was entitled to the protection of this Court, and could have plead his said purchase in bar to the complainants' bill. And that the said Joseph Le Blance, being also a purchaser in good faith, for a valuable consideration, without notice, was entitled to the protection of this Court, and could have plead his said purchase in bar to the complainants' bill; and that the said Julien Allain and Victor Babin being purchasers, deriving title and holding under the said Joseph Le Blane, called Adan, and the said Joseph Le Blane, the said defendants, Julien Allain and Marguerite Le Blane, widow in community and natural tutrix as aforesaid, are in like manner entitled to the protection of the Court, and to the benefit of the said purchases

in good faith, for a valuable consideration, without notice, made by the said Joseph Le Blane, called Adan, and the said Joseph Le Blane; and that the said defendants, Julien Allain and Marguerite Le Blane, do therefore plead the same in bar to so much of the bill of complainants as relates to the said defendants. And the defendants further say, that the said Joseph Le Blane, called Adan, sold the upper four arpents with a depth of forty arpents of the said tract of 7 arpents and 25 toises front, by 40 arpents deep, described in the bill of complaint, to Constant Viel, by an act under private signature, dated the 30th of October, 1822, and acknowledged and deposited by the parties thereto before N. Meriam, Parish Judge and ex-officio Notary Public as aforesaid, for the sum of $5000, payable in 1823, 4, 5, 6, and 7. That the said Constant Viel, having failed to pay the price, was condemned to pay the same with interest to the heirs of the said Joseph Le Blane, called Adan, by a judgment rendered by the 4th District Court of the State of Louisiana, holding sessions in the Parish Iberville, on the 29th of April, 1828, and thereafter affirmed by the Supreme Court of the State, and an execution having issued under said judgment, the said Constant Viel paid the amount due on the judgment into the hands of the Sheriff on the 4th of September, 1829. That by an act under private signature, executed at New Orleans on the 31st of December, 1829, the said Constant Viel, Vincent Pedrau, and the defendant, Rene Arnous, formed a partnership into which the said Constant Viel put the said tract of land as his contribution to the partnership funds. That the said Vincent Pedrau having shortly thereafter died, his third in said tract of land was inherited by the said defendant, Rene Arnous, under the last will and testament of the said Vincent Pedrau, which was admitted to probate and ordered to be executed by the Probate Court of New Orleans. That by an act passed before Louis Petit, Notary Public as aforesaid, on the 10th of November, 1836, the said Constant Viel sold his third in the said tract to the defendant, Rene Arnous, together with other property, for the sum of $20,000, payable in March, 1838, 1839, 1840, 1841, and 1842, all of which was paid as the instalments fell due. And these defendants aver, that the said defendants, Rene Arnous, deriving title and holding under the said Joseph Le Blane, called Adan, is also in like manner entitled to the protection of the Court, and to the benefit of the said purchasers in good faith, for a valuable consideration, without notice, made by the said Joseph Le Blane, called Adan; and that the said defendant does therefore now plead the same in bar to so much of the bill of complaint as relates to the said defendants.

And these defendants further answering, say, that the complainants and the said Adelaide Fletcher Hipp, their sister, were the legal heirs of the said Catherine Hipp, their mother, and that they, the defendants, are informed, and verily believe, that the said Catherine Hipp departed this life in the City of Vera Cruz, in Mexico, in or

about the year leaving a considerable succession, and that complainants and their sister accepted the said succession of their said mother, and entered into possession of the same in their quality of heirs as aforesaid. And these defendants further answering say, that the said Catherine Hipp was, by her said sale to the said Daniel Clark, bound to warrant the said Daniel Clark, and those holding under him, in the possession and enjoyment, as owners of the said tract of land so sold by her to him. That the said complainants and their sister, the said Adelaide Fletcher Hipp, as the heirs of the said Catherine Hipp, succeeded to her obligations as warrantor of the said Daniel Clark, and those holding under him, and became in like manner bound to warrant them in their possession enjoyment of said land, as owner. And these defendants now aver that they are informed by counsel, and verily believe, that the said complainants and the said Augustin Cuesta, Juana Cuesta, and Felicite Cuesta, the forced heirs of the said Adelaide Fletcher Hipp, having succeeded to the said obligations of the said Catherine Hipp, as warrantor, as aforesaid, cannot maintain any action against the defendants, who derive title through and under the said Daniel Clark, from the said Catherine Hipp; and that in the premises, they, the said defendants, are protected against any action on the part of the said complainants, in revendication of the said tract of land by the exception of warranty, which they now plead in bar to so much of the bill of complaint as relates to these defendants.

And these defendants further answering say, that the purchase-money paid for the said land in good faith, with the interest thereon, and the value of the permanent improvement placed on the said tract of land, in good faith, by those under whom they hold, and themselves, which they will be entitled to, if recovery be had of the said land against them, will amount to a large sum, and will hereafter be made certain.

And these defendants deny that there is any other matter, cause, or thing, in the said complainants' original and amended bill of complaint containing, material or necessary for these defendants to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, avoided or denied, is true, to the knowledge or belief of these defendants; all of which matters and things these defendants are ready and willing to aver, and maintain, and prove, as this Honorable Court shall decide. And pray to be hence dismissed with their reasonable costs and charges.

JANIN & TAYLOR,
Solicitors of Defendants.

I, R. Arnous, do solemnly swear, that what is contained in the foregoing answer, so far as concerns my own acts and deeds, is true, to my own knowledge, and that what relates to the acts and deeds of any other person or persons, I believe to be true.—R. Arnous.

Sworn to and subscribed before me, this 25th Nov'r, 1850.—J. W. Gurley, Clerk; by William Cornelius, Deputy Clerk.

Amended Bill and Bill of Revivor.

Filed 2d April, 1851, with Exhibits A, B, C, D, and F.

To the Judges of the Circuit Court of the United States for the Eastern District of Louisiana.

Felicitie Fletcher Hipp, a citizen of the Republic of Mexico, Maria Antonia Fletcher Hipp, a subject of the Queen of Spain, forced heirs and devisees of James Fletcher, deceased, Castro Fernandes and Javiera Cuesta, his wife, Jose Desedario Herrero and Felicitas Cuesta, his wife, and Augustin Cuesta; the said Javiera, Felicitie, and Augustin being the only legitimate children and forced heirs of Adelaide Fletcher, deceased, the said Adelaide being one of the forced heirs of said James Fletcher, deceased, and citizens of the Republic of Mexico, being this their amended bill and bill of revivor, against Ursin Jolly, Joseph Walsh, Rene Arnous, Julien Allain, Margueritte Le Blane, widow in community of Victor Babin, deceased, and Adolph Babin, Eliza Babin, and Mirza Babin, children and heirs of Victor Babin, deceased, of said Eastern District, and citizens of the State of Louisiana. And thereupon your orators and oratrixes complain, and say, that on the 29th of November, 1844, the said Felicitie Fletcher Hipp, Maria Antonia Fletcher Hipp, suing for themselves and on behalf and for the use of your orators and oratrixes, Augustin, Javiera, and Felicitas, filed their bill in your Honorable Court against said Ursin Jolly, Joseph Walsh, Rene Arnous, Julien Allen, and Victor Babin, since deceased, in which bill they set forth certain facts, and pray certain relief, which will particularly and at large appear, reference being thereto had. That on the 10th day of December of the same year, they filed their amendment to said bill, for the particular obligations whereof and the prayer therein contained they pray that reference may be had thereto.

That neither in the said original bill or amendment are your orators and oratrixes, Castro Fernandes and Javiera, his wife, Jose Desedario Herro and Felicitas, his wife, or Augustin Cuesta, made formal parties complainants, although facts are charged, which entitle them jointly with the complainants to a decree for the relief therein for them sought to be obtained. They are now informed, that according to the practice which prevails in, and the principles which govern Courts of Equity, they should have been made formal complainants in said suit, and that no relief can be decreed them by the usages of Courts of Equity according to the frame of said original bill. They, therefore, pray that this be received as a further amendment to said bill, and that by an order of this Honorable

Court they be admitted, taken, and treated in all respects as formal parties complainants in said original bill, as fully as if therein *named* in every part thereof in the most formal manner as parties complainants.

Your orators and oratrixes would further show to your honors, that in the draft of said original bill certain errors and omissions of fact, wholly unimportant to the merits of the case, occurred, but which have, to some extent, been rendered material by the answer purporting to have been filed in said cause. Amongst others, it is stated in said bill, that "the said James Fletcher left at his decease no other child except your oratrixes, and the said Adelaide, deceased, surviving him, the said James Fletcher, and that he was never married to any other woman save the said Catherine, their mother, and left no other legitimate descendants but your oratrixes and the said Adelaide, deceased." They would further state to your Honors, that they are informed, believe, and so charge the fact to be, that the said James Fletcher and Catherine Hipp lived and cohabited together for many years preceding the said James Fletcher's death, but were never married, and that your oratrixes, Felicitie and Maria Antonia, and the said Adelaide, deceased, were the illegitimate children of said James Fletcher and Catherine Hipp, begotten and born out of lawful wedlock.

Your orators and oratrixes would further state, that if, in point of fact, a marriage did at any time take place between the said James Fletcher and Catharine Hipp, which they now believe and charge did never occur, it was not until the year 1802, and long after the said Fletcher acquired and owned the land in controversy. That when their original bill was drafted and filed, there was amongst the papers in this Honorable Court, a writing, purporting to be a certificate, that a marriage took place between the said James Fletcher and Catharine Hipp, on the day of , 1794. That said paper is now amongst the papers in this cause, though not a part of the record. That they have within the last few days, by advice of counsel, caused a thorough examination to be made in the proper office, and into the facts and circumstances which throw light on the subject, and have ascertained the fact to be, that said paper, purporting to be a certificate of marriage, is false and forged.

That the only evidence of said marriage which the record contains and affords, is a certificate, that such marriage took place on the 19th of March, 1802. A true translation of which is herewith filed, marked A, and pray to be taken as a part hereof. And your orators and oratrixes rely and submit to your honors' consideration, if it be material that said certificate last named is not evidence of a marriage between the parties therein named.

Your orators and oratrixes would further state to your honors, that among the papers in this cause are found certain papers importing the legitimacy of your oratrixes Felicitie and Maria Antonia, and

also that of the said Adelaide, deceased. That the said papers are delusory and incorrect, or imperfect copies, and tend to deceive. That they were respectively registered as the natural or illegitimate children of said James and Catharine, and so remained registered until the month of December, 1804, when the registry was altered by writing out the word "natural" or illegitimate, and inserting the word "legitimate," and otherwise changed so as to produce the false impression, which the said copies now on file is calculated to make on the mind, all of which will fully and at large appear by reference to the documents marked respectively B, C, and D, herewith filed, and prayed to be taken as parts hereof. That the said James Fletcher departed this life on the 3d day of June, 1804, before the said certificate of marriage or registry was made or had, or before the said alterations in said registry of birth, and which was, as your orators verily believe, and charge, procured, made and done with intent to defraud them, by some person to them unknown.

Your orators and oratrixes refer to the certificate of death of the said James Fletcher, now with the papers in this case, which they beg leave to mark E, and pray that it may be taken as part thereof.

Your orators and oratrixes would further state, that the frame of the bill, as it now is imperfect and incomplete in not exhibiting and making part of the record in this case, a copy of the record purporting to authorize the said Catharine Fletcher, late Catharine Fletcher Hep, as she is therein styled, to sell the said estate. Your orators and oratrixes beg leave to file said record of proceedings as part hereof, marked F; and charge the fact to be, that it constitutes the whole and every part and parcel of the record and proceedings, and that, unless that order empowered the said Catharine to make her said sale, she had no authority to do so, there being no other or further matter or thing having any reference or relation thereto. That the said Victor Babin has departed this life, leaving the aforesaid Marguerite Le Blane, his widow in community, and the said Adolph Babin, Eliza Babin, and Morza Babin, his only children and heirs-at-law.

To the end, therefore, that the said defendants may, if they can, show why your orator and oratrixes shall not have the relief in their original and annexed bill prayed, and may upon their several and respective corporal oaths, and according to the best and utmost of their several and respective knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make to such of the several interrogatories hereinafter numbered and set forth, as by the note hereunder written, they are respectively required to answer, that is to say,

First. Whether the said James Fletcher was not the owner of the lands in this amendment referred to, before and up to the time of his death, or of some part thereof, and if not the owner of the whole, of what part was he the owner?

Second. Whether the said James Fletcher did not duly make and publish his will before his death, as in said bill is stated, thereby constituting your oratrixes Felicitie and the said Adelaide Fletcher his forced heirs or devisees?

Third. Whether the said Catharine Hipp did not take upon herself the office of his testamentary executrix?

Fourth. Whether the said Catharine Hipp did not as such testamentary executrix, or otherwise, sell said land, and attempt to convey the same to the said Daniel Clark, or sell and attempt to convey to the said Daniel Clark some part thereof, and if not as such testamentary executrix, in what character and by what right did she sell or pretend to sell and convey said lands or parts thereof?

Fifth. Whether the paper filed in this cause purporting to be such act of sale is not the real and the only act, made or done by the said Catharine, wherein and whereby she attempted to convey or did convey said land or any part of it to the said Daniel Clark? And if it is not the only act of sale, set forth fully and file such other or others as there may be, or state fully the substance of the same and the reasons why copies of the originals or the originals cannot be produced.

Sixth. Whether the copy of the record herewith filed, marked F, is not a full, true, and perfect copy of the record and proceedings had to empower and authorize such sale? And if not a full, true, and perfect copy of every part of the said record and proceedings, wherein it is incomplete or deficient?

Seventh. Whether the certificate of marriage herewith filed, marked A, is not a full and correct copy of the only certificate appearing on the registry of marriages?

Eighth. Whether the copies marked B, C, and D, are not true copies from the Register with all the interlineations, erasures, and notes, on said registers? And if not, wherein is there an omission or inaccuracy, and what has been omitted or what inaccuracy is there?

Ninth. Whether the said James Fletcher did not die on the 3d day of June, 1804, and the certificate thereof given on the 5th of the same month, and if any, when did the said James Fletcher die?

Tenth. Whether they do not derive their pretended title to said land from the said Daniel Clark? and if any, from whom and by what acts or conveyance do they derive their title?

Eleventh. Are they not respectively in possession of parts of said land, claiming title thereto, and of what parts are they in possession, and to what parts do they claim title respectively?

Twelfth. Whether they have not received the rents, issues, and profits of said land or some part of it, and what part of it, and how long have they received the same, and of what value, as to what amount, have the rents, issues, and profits been received by them? Stating the rents, issues, and profits for each year separately and specifically.

And they pray that the United States writ of subpœna issue against the said defendants, Ursin Jolly, Joseph Walsh, Rene Arnous, Julien Allen, Marguerite Le Blane, widow in community of Victor Babin, deceased, Adolph Babin, Eliza Babin, and Mirza Babin, heirs of said Victor Babin, deceased, directed, &c. And grant to your orators and oratrixes all such relief as to equity belongs and their case may require, and they as in duty bound will ever pray, &c.—Daniel Mayes, Solicitor for Complainants.

The defendants, Ursin Jolly, Joseph Walsh, Rene Arnous, Julien Allen, Marguerite Le Blane, Eliza Babin, Adolph Babin, and Mirza Babin, are respectively required to answer the interrogatories, numbered respectively 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12.—Daniel Mayes, Solicitor for Complainants.

Exhibit A.

Filed with Amended Bill and Bill of Revivor, 2d April, 1851.

Indorsed: Translation of the Marriage Entry and the Note.

Translation of the note to the registry of the alleged marriage of Fletcher and Hipp:—

"The adjoining certificate of marriage, contracted by Don Santiago Fletcher and Dona Catalina Hepp, by judicial decree of the vicar-general of this colony, Mr. Patricio Walsh, dated the sixth of December, this present month, has been registered in the current book of marriages at the request made in this tribunal by the above-mentioned Dona Catalina. It appearing that it was by the neglect of the priest, Don Francisco Perrez Guarero, that the same was not recorded in proper time, and in its proper place. And by order of the above-mentioned vicar I make this note. New Orleans, 7th of December, 1804. F. Antonio."

Marriage entry:—

"The nineteenth of March, eighteen hundred and two. The priest of the Cathedral Church of New Orleans, Don Francisco Perrez Guerero, united in matrimony Don Santiago Fletcher, lawful son of Don Santiago Fletcher and Mrs. Margarite Lila, with Mrs. Catalina Hepp, both of the vicinity of this city; and to that matrimonial act were present, as witnesses, Don Francisco Ramon and Don Juan Sardina, neighbors of this parish. In faith of which, by order of the provisor and vicar-general, I have set this entry in the Book of Marriages.

"New Orleans, seventh of December, eighteen hundred and four. Fc. Antonio de Sedella."

Translation of the Note to the Certificate of Birth of Adelaide.

"Note. By judicial decree of the 8th December, 1804, from the vicar-general, the legitimacy of Adelaide Fletcher and Felicite

Fletcher is here noted, consequent on the subsequent marriage of Don Santiago Fletcher and Catalina Hipp. F. Antonio."

Exhibit B. In Spanish.

Exhibit C. In Spanish.

Exhibit D. In Spanish.

Note.—These Exhibits are omitted, their contents being admitted in the agreement filed by counsel. See page 194.

J. W. GURLEY,
Clerk.

Exhibit F.—Filed with amended Bill, and Bill of Revivor, 2d April, 1851.

Order.

Superior Court, Wednesday, June 18th, 1806.

Present, the Honorable J. B. Prevost.

On the petition of Catharine Fletcher, late Catharine Hep, executrix of James Fletcher, deceased, it is ordered that the said Catharine be duly empowered to sell and convey for such price as may be obtained therefor each and all of those several tracts of land, formerly conveyed by said James Fletcher to Francis Ramon Canes, by deed passed before Peter Pedesclaux, dated the 1st day of December, 1801, and which have been reconveyed to the estate of the said Fletcher, and that she receive the money thereon, and lay out the same on good security for the maintenance of herself and children, agreeably to the direction of said Fletcher's will, first paying to Mr. Daniel Clark any sums which may be due or become due to him for advances made to said Canes in order to obtain a relinquishment of his claim on said tracts of land.

Fifth District Court of New Orleans. I hereby certify that the above is a true and correct extract of the Minutes of said Superior Court, the records of which have been by law transferred to this Court. Clerk's office, 14th March, 1851.—Boisblanc, Dy. Clerk.

[SEAL.]

Minutes.

Order, appointing Guardian.

April Term, A. D. 1851.

New Orleans, Monday, 5th May, A. D. 1851. Court met pursuant to adjournment. Present, Hon. Thos. H. McCaleb, Dist. Judge. Absent, Hon. J. McKenley, Presiding Judge.

FLETCHER'S HEIRS
v.
URSIN JOLLY et als. } No. 1285.

On motion of Daniel Mayes, Esq., of counsel for plaintiffs, it is ordered that Margaret Le Blane, widow of Victor Babin, deceased, be, and she is hereby appointed Guardian ad litem for Adolph Babin, Eliza Babin, and Mirza Babin, infants, heirs of Victor Babin, deceased.

Minutes.

April Term, 1851.

New Orleans, Monday, 17th November, 1851. Court met pursuant to adjournment. Present, Hon. Thos. H. McCaleb, Dist. Judge. Absent, Hon. J. McKinley, Presiding Judge.

FLETCHER HEIRS
v.
URSIN JOLLI et als. } 1285.

On motion of Danl. Mayes, Esq., solicitor for complainants, it is ordered that they have leave to file in this case an Amended Bill and Bill of Revivor.

Amended Bill and Bill of Revivor.

Filed 17th November, 1851.

To the Judges of the Circuit Court of the United States for the Eastern District of Louisiana.

Felicite Fletcher Hipp, Maria Antonia Fletcher Hipp, Castro Fernandez, and Javiera Castro, his wife, José Desidario Herrero, and Felicitas Cuesta, his wife, and Agustin Cuesta, beg leave to file this their further amended bill and bill of revivor, in the case instituted by them in your Honorable Court against Ursin Jolly, Joseph Walsh, &c.

And herein your orators and oratrixes would state that the defendant, Ursin Jolly, has departed this life, leaving Lodoisha Jolly, Louis Jolly, Anatole Jolly, Charles Jolly, Olympi Jolly, and Arthur Jolly, his children and heirs, and Celena Babin, his widow, and that the said Julian Allain has also departed this life, leaving Maria Allain, wife of Leonidas Reddett, Julien Allain, Marie Leo Cadie Allain, and Elodie Allain, his children and heirs, and Hortance Le Blane, his widow. Your orators and oratrixes pray that the said heirs and widows of Ursin Joly and Julien Allain may be made defendants in this cause, that they and each of them be required to answer the original and amended bill fully on oath, and that the relief prayed for against their ancestors be granted against them

respectively. And grant to your orators and oratrixes the United States' writ of subpœna directed, &c., and commanding, &c., and all such other and further relief as to equity belong, and they as in duty bound will ever pray, &c.

D. MAYES,
Sol. for Compls.

Consent.

Filed, and order entered on minutes, 13th February, 1852.

FLETCHER HEIRS
v.
JOLLY & BABIN.

Margaret Le Blanc, widow in community of Victor Babin, appointed guardian ad litem of the infant heirs of Victor Celina Jolly, widow of Ursin Jolly, appointed guardian ad litem for the infant heirs of said Ursin Jolly; Hortence Le Blanc, widow of Julien Allain, guardian ad litem for his infant heirs. The clerk will make the entry. D. Mayes, for complainants; Miles Taylor, for defendants.

Minutes. December Term, 1851.

New Orleans, Friday, February 13th, 1852. Court met pursuant to adjournment. Present, Honorable Theo. H. McCaleb, District Judge; absent, Honorable J. McKinley, Presiding Judge.

FLETCHER HEIRS
v.
URSIN JOLLY et als. 1285.

On motion of D. Mayes, solicitor for complainants, and with the written consent of Miles Taylor, solicitor for defendants, now filed, it is ordered, that Margaret Le Blanc, widow in community of Victor Babin, be appointed guardian ad litem of the infant heirs of Victor; that Celina Jolly, widow of Ursin Jolly, be appointed guardian ad litem for the infant heirs of said Ursin Jolly; and that Hortence Le Blanc, widow of Julien Allain, be appointed guardian ad litem for his infant heirs.

Answer to Amended Bill, and Bill of Revivor.

Filed Feb. 17th, A. D. 1852.

FLETCHER HEIRS
v.
URSIN JOLY & als.
United States Circuit Court. Eastern District of Louisiana.

In Chancery.

The answer of Celine Babin, widow of Ursin Joly, one of the origi-

nal defendants, now deceased, acting herein as widow in community and as natural tutrix of Louis Joly, Analotte Joly, and Olympe Joly, and of Lodoiska Joly, wife of Robert Tounon, who joins and assists her herein, the said Louis, Analote, Olympe, and Lodoiska being the heirs and legal representatives of the said Ursin; of Marguerite Le Blanc, widow of Victor Babin, acting herein as widow in community and natural tutrix of Eline Babin and Miera Babin, minors, and of Adolphe Babin, the said Eline, Mirza, and Adolphe being the heirs and legal representatives of the said Victor; of Rene Arnous; and of Hortance Le Blanc, widow of Julien Allain, one of the original defendants, now deceased, the said widow acting herein as widow in community and as natural tutrix of Julien Allain, Leocade Allain, and Elodie Allain, minors, and of Toe Allain, the wife of Leonidas Reddiche, who joins and assists her herein, the said Julien, Leocade, and Elodie and Toe being the heirs and legal representatives of the said Julien, deceased, to the bill of complaint and amended bill and bill of revivor of Felicite Fletcher Hipp and Maria Antonia Fletcher Hipp, and of Castro Fernandes, and Javiera Cuesta, his wife, Jose Desidario Herrero and Felicite Cuesta, his wife, and Augustin Cuesta, complainants: the defendants now and at all times saving and reserving to themselves all benefit and advantage of exception which can or may be had, or taken to the many errors, uncertainties, and other imperfections in the said complainants' original bill and their amended bill, and their amended bill and bill of revivor contained, for answer to so much and such part thereof as these defendants are advised is, or are material or necessary for them to make answer unto; these defendants answering to the best of their knowledge, remembrance, and belief, say, that they repeat and now adopt the answer heretofore made to the original and amended bill, before exhibited in this Court, and pray the same to be taken as an answer to the amended bill and bill of revivor, now exhibited against them, so far as the same is applicable.

And the defendants further answering to the said amended bill and bill of revivor, now exhibited against them, to the best of their knowledge, remembrance, and belief, say, that they are informed, and verily believe, that the complainants did produce the said certificates to which they refer in the said amended bill and bill of revivor, and that they did file them, and all of them, and make them all a part of the record of this case on or about the 17th of March, 1846; that they are informed, and verily believe, that they were made use of as evidence in the proceedings had in this case against Joseph Walsh, one of the defendants to the original bill filed in this cause, and which said proceedings, after the taking of a judgment *pro confesso* against him the said Walsh, were terminated by a decree against him and in favor of the complainants at or about the April term of 1848 of this Honorable Court, as will be seen by reference to the record of the case and to the decree which will be found therein.

And the defendants further say that they have no knowledge of any kind whatever in relation to the birth and parentage of the said complainants, and of the said Adelaide, or to the existence or non-existence of a marriage between the said James Fletcher and the said Catharine Hipp. That all the facts connected with the same transpired before the date of the sale said to have been made by Catharine Hipp, the nullity of which is charged by complainants, and a great many years before defendants had an interest in the property said to have been comprised in the said sale. That the complainants from their position must have necessarily had a perfect acquaintance with the facts and circumstances involved in these questions. That they were interested in knowing the truth, and with the means of knowing it within their reach, they have always, as defendants are informed and verily believe, hitherto alleged that they were the legal and forced heirs of the said James Fletcher, which necessarily implies that they were born in lawful wedlock and were the issue of a marriage between the said James Fletcher and the said Catharine Hipp, and that having so alleged themselves to be the legal and forced heirs of the said James Fletcher, and having produced and filed in this Court written proof of a marriage between the said James Fletcher and the said Catharine Hipp, which shows that the said marriage took place on the 19th of March, 1794, for the purpose of establishing that allegations. These defendants aver and believe that complainants cannot now in law be permitted to deny the said marriage, or to show that the written proof or evidence offered, furnished, and introduced by themselves was false, fraudulent, and forged, or to contradict the same and show that it took place at any other time, or to impeach and destroy the validity and effect of the evidence furnished and filed by them as aforesaid.

And these defendants further answering say, that they have no knowledge or information with respect to any alteration or alterations pretended to have been made in, or in relation to the said certificates, or any of them; and they further say, that they have no information or belief, that any alteration or alterations were made therein, with the intent and design to defraud complainants, or either of them, and they aver the truth to be, that if any alteration or alterations were ever made in the said certificates, or any of them, that such alteration or alterations were made without their procurement, aid, or knowledge, and without any intent or design to benefit them.

And these defendants further answering say, that if the complainants are, contrary to defendants' expectation and belief, permitted to impeach and attack the said certificates of marriage, and of baptism, and if they do introduce legal proof which has the effect to disprove the said certificates filed as aforesaid, by the complainants, in 1846, the defendants say, that they have personally no knowledge, information, or belief, in relation to the birth or parentage of the com-

plainants, or of the said Adelaide, and that they do not admit or know that the said complainants and the Adelaide were devisees of the said James Fletcher.

And these defendants further answering say, that they have no personal knowledge or information whether the said James Fletcher was the owner of the lands in the amended bill and bill of revivor referred to; or whether the said James Fletcher did duly make and publish his will before his death, as in said bill stated, constituting the complainants, Felicite Fletcher Hipp, and Maria Antonia Fletcher Hipp, complainants, and Adelaide their sister, his forced heirs or devisees; or whether the said Catharine did not take upon herself the office of his testamentary executrix; or whether the said Catharine Hipp did not, as such testamentary executrix, or otherwise, sell such land, and attempt to convey the same, or any part thereof, to the said Daniel Clark; or whether the paper filed in this cause, purporting to be such act of sale, is not the real and the only act made or done by the said Catharine, wherein and whereby she attempted to convey or did convey said land or any part of it, to the said Daniel Clark; or whether the copy of the record filed, marked F, is not a full, true, and perfect copy of the record and the proceedings had to empower and authorize said sale. And that they have no knowledge, information, or belief, in relation to the said facts inquired of, but what is derived from the papers purporting to be copies from originals and records existing in the public offices of the State of Louisiana, which they are informed and believe, are on file in the cause, but that they have no personal knowledge as to the execution of the originals of the said acts, or of the correctness of the said copies, or whether there may not be other papers in existence, in relation to the matters and things inquired of, and they respectfully submit, that whether the said copies on file do or do not prove and establish the execution and existence of the originals of which they purport to be copies, or the truth of the facts mentioned and set forth in them, are judicial questions to be decided by this Court, and that they are not fit and proper to be propounded to these defendants.

And these defendants further answering say, that they have no knowledge or information whether the certificate of marriage filed with the said amended bill and bill of revivor, marked A, is a full and correct copy of the only certificate appearing on the Registry of Marriage; or whether the copies marked B, C, & D, are not true copies from the register, with all the interlineations, erasures, and notes on said register. That they have never seen, and have no knowledge of the said register of marriages, or the other register referred to; and that they do not know that the said certificates exists in them, or if they do exist that they are the only ones. And that they do not know that the said James Fletcher died on the 3d of June, 1804, or when he died; nor do they know anything about the said certificate in relation thereto.

And the defendants further answering say, that they derive their titles to the said lands, and are respectively in possession of parts thereof, as by them set forth in their answer to the original and amended bill, and before adopted as an answer as far as it was applicable to amended bill and bill of revivor now exhibited, and not otherwise.

And these defendants deny that there is any other matter, cause, or thing, in the said complainants' original bill, amended bill, and *amended bill, and* bill of revivor, contained, material or necessary for these defendants to make answer unto, and not herein well and sufficiently answered, confessed, traversed, avoided, or denied, is true, to the knowledge or belief of these defendants; all which matters and things these defendants are ready to aver, maintain, and prove, as this Honorable Court shall decide. And pray to be hence dismissed, with their reasonable costs and charges.—Miles Taylor, Solicitor of defendants.

I, Rene Arnous, do solemnly swear that what is contained in the foregoing answer, so far as concerns my own acts and deeds, is true to my own knowledge, and that what relates to the acts and deeds of any other person or persons, I believe be true.—R. Arnous. Sworn to and subscribed before me, this 17th February, A. D. 1852. J. W. Gurley, Clerk: by W. Cornelius, D. C.

Replication.

Filed March 5th, 1852.

In Chancery.

Before the Circuit Court of the United States, for the Eastern District of Louisiana.

The replication of Felicitie Fletcher Hipp and Maria Antonia Fletcher Hipp, and Castro Fernandes and Javiera Cuesta, his wife, Jose Heredo and Felicitie Cuesta, his wife, and Augusta Cuesta, complainants, to the answer of Cetine Babin, widow of Ursin Jolly, one of the original defendants, now deceased, acting herein as widow in community, natural tutrix and guardian ad litem of Louis Jolly, Anatoli Jolly, and Olympia Jolly, and of Ludovesia Jolly, and others, to the bill of revivor and amended bill, herein by said complainants exhibited against them.

These repliants, saving and reserving to themselves, now and at all times hereafter, all and all manner of benefit of exception, which may be had or taken to the manifold insufficiencies of the said answer, for replication thereto, say that they will aver, maintain, and prove their bill of revivor and amended bill aforesaid to be true, certain, and sufficient, in the law, to be answered unto; and that the said answer of the said defendants is uncertain, untrue, and

insufficient, to be replied unto by these repliants, without this, that any other matter or thing whatsoever, in the said answer contained, material or effectual in the law to be replied unto, and not herein or hereby well and sufficiently replied unto, confessed, and avoided, traversed or denied, is true. All which matters and things these repliants are and will be ready to aver and prove, as this Honorable Court shall direct, and humbly pray as in their said bill they have prayed.—Daniel Mayes, Solicitor for complainants.

Cross Bill of Defendants.

Filed 5th March, 1852.

United States Circuit Court, Eastern District of Louisiana.

FLETCHER HEIRS
v.
URSIN JOLY ET ALS.

In Chancery.

To the Honorable the Circuit Court of the United States for the Eastern District of Louisiana.

Celine Babin, widow of Ursin Joly, herein acting as widow in community and as natural tutrix of Louis Joly, Anatoli Joly, and Olymphe Joly, minors, and Lodoiska Joly, wife of Robert Tousson, also joins and assists herein, the said Louis, Anatoli, Olymphe, and Lodoiska being the heirs and legal representatives of the said Ursin Joly; Marguerite Le Blane, widow of Victor Babin, acting herein as widow in community and natural tutrix of Elise Babin, and Mirza Babin, minors, and Adolphe Babin; the said Elise, Mirza, and Adolphe being the heirs and legal representatives of the said Victor Babin; Rene Arnous, and Hortense Le Blane, widow of Julien Allain, herein acting as widow in community and natural tutrix of Julien Allain, Leocade Allain, and Elodie Allain, minors, and Joe Allain, wife of Leonidas Raddick, who joins and assists her herein, all citizens of the State of Louisiana, bring this their Cross-bill against Felicite Fletcher Hipp, Maria Antonia Fletcher Hipp, Castro Fernandez and Janieva Cuesta, his wife, Jose Heredario Herredo and Felicite Cuesta, his wife, and Augustin Cuesta, all aliens, the said Maria Antonia Fletcher Hipp being a subject of the Queen of Spain, and the said Felicite Fletcher Hipp, Castro Fernandes and Janieva Cuesta, Jose Heredario Herredo, and Felicite Cuesta, *and Jose Heredario Herredo and Felicite Cuesta*, and Augustin Cuesta, being a citizen of the Republic of Mexico.

And thereupon your orators and oratrixes complain and say, that the said Felicite Fletcher Hipp, Maria Antonio Hipp, Castro Fernandes and Janiera Cuesta his wife, Jose Heredario Heredo, and Felicite Cuesta, and Augustin Cuesta, have exhibited their bill in this

Honorable Court, in which they claim from your orators and oratrixes, three-fourths of the lands, plantations, and premises, situate, bounded, and described as follows, to wit, two certain tracts of land in the Parish of Iberville, on the left bank of the River Mississippi; the first measuring seven arpents and twenty-five toises in front, and forty arpents in depth, bounded on the upper side by lands belonging, in 1800, to Paul Chiasson, and on the lower side by lands belonging, in 1800, to Victor Blanchard; the second tract or plantation measuring six arpents and eleven toises in front, and forty arpents in depth, bounded on the upper side by lands belonging, in 1800, to Etienne Coulon, and on the lower side by lands belonging, in 1800, to Paul Chiasson; and also three-fourths of "the rents, profits, receipts, and revenues of the said lands possessed or enjoyed" by your orators and oratrixes, and call upon them to set forth and describe the portions of said tracts possessed by them respectively; that your orators and oratrixes made their answer to the said bill, in which they stated that they were respectively in possession of certain portions of the said tracts of land at the time of filing the said bill, described and set forth as follows, to wit: Celine Babin, widow of Ursin Joly, in community with him and the said Louis Joly, Anatoli Joly, Olymphe Joly, and Lodoiska Joly, his legal heirs, of a tract of land having three arpents front on the left descending bank of the Mississippi, by forty arpents in depth, and which is the upper part of the tract of 6 arpents and 11 toises in front. Marguerite Le Blane, widow of Victor Babin, in community with him and the said Elise Babin, Mirza Babin, and Adolphe Babin, his heirs and legal representatives, of a tract of one arpent and a half front on the Mississippi, by forty arpents deep, being also a part of the tract of six arpents and 11 toises front, and bounded above by the land possessed by Ursin Joly. Rene Arnous, of a tract of land having four arpents front on the Mississippi River, by forty arpents in depth, and which is the upper part of the tract of 7 arpents 25 toises front; and the defendants Julien Allain, who has since departed this life, and is now represented by the said Hortense Le Blae and Julien Allain, Leocate Allain, Elodie Allain, and Toe Allain, and the defendant, Marguerite Le Blane, widow of Victor Babin, and Elise Babin, Mirza Babin, and Adolphe Babin, jointly of the remainder of the said tract; and that in their said answer your orator and oratrixes set up various matters of defence and pleas in opposition to and in avoidance of the claim and pretensions of the said Felicite Fletcher Hipp, Maria Antonia Fletcher Hipp, Castro Fernandes, and Janiera Cuesta his wife, Jose Heredario Heredo, and Felicite Cuesta his wife, and Augustin Cuesta, and denied that they had any right, title, or interest in or to the said land, and prayed that their said bill might be dismissed, but that your orators and oratrixes further stated, in their said answer, that if a recovery were had of the said land, that as purchasers and possessors in good faith

of the said land they would be entitled among other things to the value of the permanent improvements made and placed on the said tract of land, and that the said permanent improvement made and placed upon the said land would amount to a large sum, and that the same would thereafter be made certain.

And your orators and oratrixes would further show that upon the portion of the said tract of land in the possession of the said Celine Babin, widow of the said Ursin Joly, in community with him and of the heirs and legal representatives of the said Ursin, before described, 160 arpents in superficies have been cleared, ditched, and fenced, and the work and labor done in clearing and ditching the same, so that it has become fit for cultivation, and made capable of producing fruits, revenues by culture, the value of the said land has been augmented in a sum equal at least to fifty dollars for each and every arpent of land so cleared, ditched, and enclosed, as to be ready for cultivation; that a sugar-house has been constructed, built, and erected, and now exists on the said land, which is worth more than five thousand dollars; that a dwelling-house has been erected and built, and now exists thereon, worth at least three thousand dollars; that various other buildings, such as cabins or houses for negroes, corn-houses, &c. &c., have also been erected, and now exists thereon, worth upwards of two thousand dollars; that a levee has been made anew upon the front of the same, and now exists thereon for its protection from the waters of the river, which is worth at least four hundred dollars; and that a large ditch has been made upon the rear of the said portion of land for the carrying off of the water collected by the ditches in the cultivated land, and which was essential to the proper drainage of the same, which also now exists and is worth over three hundred; and that the said clearing, ditching, and fencing of 160 arpents of the said land, the construction and building of the said sugar-house, dwelling-house, and the other buildings mentioned as aforesaid, the making of the said levee, and of the said large ditch, are permanent improvements which have augmented the value of the said land in the total sum of eighteen thousand seven hundred dollars. That upon the portion of the said tract of land before described in the possession of Marguerite Le Blanc, widow of Victor Babin, in community with him, and of the heirs and legal representatives of the said Victor Babin and of Hortense Le Blanc, widow of Julien Allain, in community with him, and of the heirs and legal representatives of the said Julien Allain, who cultivate the same in partnership, 120 arpents in superficies have been cleared, ditched, and fenced, and the work and labor done in clearing and ditching, so that it has become fit for cultivation, and made capable of producing fruits and revenues by culture, the value of the said land has been augmented in a sum equal to at least fifty dollars for each and every arpent of land so cleared, ditched, and enclosed, so as to be ready for cultivation. That a corn-crib and other buildings have been erected and now

exists on the said portion, worth at least five hundred dollars. That a new levee has also been made on the front for the purpose of protecting the same from the waters of the river, which now exists thereon, worth not less than eight hundred *arpents of land*, the building of the said dwelling-house and other buildings, the making of the said large ditch, and the making of the said levee, are permanent improvements which augmented the value of the said land in the sum of seven thousand one hundred dollars.

Your orators and oratrixes further show that Paul Chiasson purchased the said tract of land, having six arpents and eleven arpents front and forty arpents depth, as aforesaid, possessed and claimed as owner by the said widow and heirs of Ursin Joly, and the said widow and heirs of Victor Babin, from Daniel Clark, on or about the 11th of November, 1807, by public act passed before N. Moriam, Parish Judge of the parish of Iberville, and ex-officio Notary Public therein, for the price of three thousand dollars. That the said Paul Chiasson sold the said tract of land to Etienne Chiasson and Victor Chiasson, on or about the 18th of March, 1808, by public act also passed before the said N. Moriam, Parish Judge as aforesaid, for the price of three thousand dollars. That an equal partition of the said tract was made between the said Etienne and Victor, and that the said Victor Chiasson sold his portion thereof on the 2d of October, 1819, to Simeon Allain, by public act passed before John Dulton, Parish Judge of the parish of Iberville, and ex-officio Notary Public therein, for the price of three thousand six hundred dollars. That the said Simeon Allain sold the same on the 18th of January, 1830, to William Maddox, by public act passed before John Dulton, Parish Judge of the parish of Iberville, and ex-officio Notary Public therein, for the price of three thousand. That the said Maddox having died, the said tract was sold according to law under the authorities of the Court of Probates of the said parish of Iberville, and adjudicated to Dominique Labauve, on the 16th of October, 1836, for the price of fifteen hundred and five dollars; that by public act passed before Louis Petit, Notary Public in the said parish of Iberville, on the 13th of October, 1836, sold an undivided half of said tract to Victor Babin, for the price of dollars. And that the said Etienne Chiasson having departed this life, the half of the said tract of land allotted to him in said partition was sold according to law, under the authority of the Court of Probates of the said parish of Iberville, in virtue of a decree dated on the 14th day of September, 1822, to Julia Sharp, for the price of dollars. That the said Julia Sharp having died, the said land was adjudicated at a sale made under authority of the said Court of Probates to Fergus Duplantier, on the 28th November, 1838, for the price of $3,250. That by an act passed before John Dulton, Parish Judge of Iberville, and Notary Public therein as aforesaid, on the 19th January, 1839, the said Duplantier sold the same to John C.

pasley for the price of $3256; and that the said Beasley having died, the said land was sold under the authority of the Court of Probates of the said parish of Iberville, and adjudicated to the said Ursin Joly on the 16th of April, 1842, for the price of $3005.

And your orators and oratrixes further show that Joseph Le Blanc Adam, purchased the said tract of land, having seven arpents and twenty-five toises front, by forty arpents in depth, and possessed and claimed by the said Rene Arnous, and the said widow and heirs of the said Julien Allain, and the widow and heirs of the said Victor Babin, from Daniel Clark, on or about the 17th of August, 1807; by public act passed before Pierre Pedesclaux, a Notary Public, in the City of New Orleans, for the price of four thousand dollars. That the said Joseph Le Blanc Adam, on the 1st of May, 1810, sold three arpents and twenty toises and three feet of the upper part of the said tract to Joseph Le Blanc, by public act passed before N. Miriam, Parish Judge of the Parish of Iberville as aforesaid, for the price of $2000. That the said Joseph Le Blanc having died, the said land sold according to law under the authority of the Court of Probates, was adjudicated to Joseph Le Blanc Adam, for the price of three thousand five hundred dollars. That by act under private signature, dated on the 26th of January, 1818, which was acknowledged by all of the parties thereto, and deposited by an act passed before John Dulton, Parish Judge of the Parish of Iberville, and ex-officio Notary Public therein; on the 2d of March, 1818, the said Joseph Le Blanc Adam sold the said land to Victor Olivier Blanchard, for the price of three thousand dollars; that a partition of the same was made between the said Olivier and Victor, by which the said Olivier took the upper two arpents front, and the said Victor the remaining one arpent and twenty-five toises. That the said Victor died, leaving a will, which was admitted to probate, and ordered to be executed by a decree of the Court of Probate, of the Parish of Iberville, on the 19th of March, 1818, by which he bequeathed the said tract of land of two arpents front to Thomassin Blanchard. That the said Thomassin Blanchard having also died, the said tract of two arpents front was sold under authority of the Court of Probate of the said Parish of Iberville, according to law, and adjudicated on the 6th of April, 1841, to the said Julien Allain. That the said Victor Blanchard having died, leaving seven children and heirs, the other tract of one arpent and twenty-five toises front, which were allotted to him in the said partition between him and the said Olivier Blanchard, fall to his said children and heirs. That the said children and heirs all being of age, they made an inventory of the property belonging to the estate of the said Victor Blanchard, before the said Louis Petit, Notary Public, on the 24th of December, 1836. That by act passed on the same day and before the same Notary Public, Valmont and Victorin, two of the said heirs, sold their hereditary shares in their father's estate to their brother and co-heir, Thomassin Blanchard.

That by an act passed before the same Notary on the 25th January 1840, Joachim, another of the said heirs, sold his share in the said estate to Elizabeth, his sister and co-heirs. That by reason of these sales by the said heirs, the estate of the said Victor Blanchard, was the property of the said Thomassin in the proportion of four-sevenths, and of the said Elizabeth in the proportion of two-sèvenths, and of Appoline Blanchard, wife of Bernard Allain, another of the children and heirs of the said Victor Blanchard, in the proportion of one-seventh. That the said Thomassin Blanchard having also died, a probate sale was ordered both of the property belonging to the estate of the said Thomassin exclusively, and of the property which is derived from the estate of Victor Blanchard, he held jointly with the said Elizabeth, and the said Appoline, wife of Bernard Allain. That at the said sale, which was made by the said John Dulton, Parish Judge of the Parish of Iberville, the said Julien Allain became the purchaser, both of the said tract of two arpents front, belonging to the said Thomassin Blanchard exclusively (he having inherited the same from the said Olivier Blanchard), as also the tract of one arpent and twenty-five toises proceeding from the estate of the said Victor Blanchard. That by an act passed before the same Notary on the 30th of April, 1841, the said Julien Allain sold an undivided half of his said purchase to the said Victor Babin. And they further say, that the said Joseph Le Blanc Adam, sold the upper four arpents front of said tract, with a depth of forty arpents, to Constant Viel, by an act under private signature, dated the 30th of October, 1822, and acknowledged and deposited by the parties thereto before N. Miriam, Parish Judge and ex-officio Notary Public as aforesaid, for the price of five thousand dollars. That by an act under private signature, executed at New Orleans, on the 31st of December, 1829, the said Constant Viel, Pideau, and your orator Rene Arnous, formed a partnership, into which the said Constant Viel put the said tract of land as his contribution to the partnership funds. That the said Pideau having died, his third in said tract of land was inherited by the said Rene Arnous, under the last will and testament of the said Pideau, which was admitted to probate and ordered to be executed by the Probate Court of New Orleans. That by an act passed before Louis Petit, Notary Public as aforesaid, on the 10th of November, 1836, the said Constant Viel sold his third in said tract to the said Arnous.

And your orators and oratrixes further show that the said Paul Chiasson, Etienne Chiasson, Victor Chiasson, Simeon Allain, William Maddox, Dominique Labauve, Julia Sharp, Fergus Duplantier, John C. Beasly, Joseph Le Blane Adain, Joseph Le Blane, Victor Blanchard, and Olivier Blanchard, under and through whom they hold and possess respectively as aforesaid the said tracts of land, held and possessed the said tracts held and possessed by them respectively as owners by of acts sufficient in terms to transfer the same. That they had no knowledge of any defects in their said titles, and

had just reasons to believe themselves the owners of the portions of land which they purported to transfer, and did so believe themselves. And that they were possessors bona fide of the said portions of land. And that your orators and oratrixes also held and possessed the said tracts of land as owners by virtue of acts sufficient in terms to transfer the same, and had just reason to believe themselves the owners thereof and were possessors bona fide.

And your orators and oratrixes further show that all the permanent improvements existing on the said land as aforesaid were made thereon by them and those under whom they held at their expense. And they now aver that in the premises if the said Felicite Fletcher Hipp, Maria Antonia Fletcher Hipp, Castro Fernandez, and Jancia Cuesta, José Heredario, Heredo and Felicité Cuesta, and Augustin Cuesta, are decreed to be the owners of three-fourths of the said tracts of land, or any other proportion of the same, or of any part of the same, then your orators and oratrixes are entitled to recover for the value of all the permanent improvements made and placed on the said land as aforesaid, or the amount of the expenses incurred in making the same, and to retain the said land until the value of the said permanent improvements, or the amount of the expenses incurred in making the same, has been paid.

And your orators and oratrixes further show that they cultivate the said land cleared as aforesaid, and that if they are evicted from it by a decree of this Court, and there are any crops growing on the same at the time, then your orators and oratrixes will be entitled to have reimbursed to them the expenses incurred by them in preparing the land for the said crops, in procuring and supplying the seeds and plants, and in the cultivation, and management, and care thereof, and that they will be entitled to gather and enjoy the said crops, unless the said expenses are paid to them.

And your orators and oratrixes further show, that by the laws of the State of Louisiana they have a right to call their vendors in warranty by process legally served upon them to defend the action tending to evict them from the land held and possessed as aforesaid, and to claim from them the price which they have heretofore paid for the same, and any damages which they might suffer from an eviction, and that their vendors have, by the said laws, the same right against their vendors, and so on with each successive vendor up to the origin of their titles. That they are informed and believe, however, that in consequence of the limited jurisdiction of this Honorable Court your orators and oratrixes cannot exercise the said right against their vendors or any of them, inasmuch as all of the said vendors, and their vendors' vendors, are citizens of the State of Louisiana, and cannot be made parties herein. That for that reason the said vendors are not now made parties, and that your orators and oratrixes, hereby reserving all the rights they may be entitled to in law in equity in the premises against said vendors or any of them

now or their representatives in virtue of the said sales and conveyances heretofore mentioned, claim to exercise the rights of the said vendors against the said Felicite Fletcher Hipp, Maria Antonia Fletcher Hipp, Castro Fernandes and Janira Cuesta, his wife, Jose Heredario, Heredo, and Felicite Cuesta, his wife, and Augustin Cuesta, complainants in the said original bill, and amended bill and bill of revivor, exhibited by them as aforesaid, against your orators and oratrixes.

And your orators and oratrixes would further show that the said complainants in the said original and amended bill and bill of revivor are aliens as therein set forth, residing out of the United States, and that they are informed and believe that they are now out of the United States. That no personal service of the writ of subpœna can be made upon them. That by the laws of Louisiana, your orators and oratrixes would have the right to set up the various matters and things herein set up and alleged in an answer to an action brought in revindication of the property claimed from them without any personal citation or service upon the plaintiffs in said action. And that in the premises they are advised and believe that a service upon the solicitor of the said complainants will be sufficient.

To the end therefore that the said Felicite Fletcher Hipp, Maria wife, Antonia Fletcher Hipp, Castro Fernandes and Janira Cuesta, his Jose Heredario Heredo and Felicite Cuesta, his wife, Augustin Cuesta, defendants herein, may, upon their several and respective corporal oaths, true, direct, and positive answers make to all and singular the matters hereinbefore stated and charged, and that they shall so answer to the best of their respective knowledge, remembrance, and belief. And, especially, set forth and declare whether the said complainants are not respectively in possession as owners of the portions of the said tracts of land hereinbefore described, and stated to be in their possession; and whether the said Paul Chiasson, Etienne Chiasson, Victor Chiasson, Simeon Allain, William Maddox, Dominique Labauve, Julia Sharp, Fergus Duplantier, John C. Beasley, Joseph Le Blanc Adam, Joseph Le Blanc, Victor Blanchard and Olivier Blanchard, and these complainants, were not respectively in possession of the portion of the said tracts of land as owners, and whether they did not hold and possess the same respectively by virtue of acts of sale sufficient in terms to transfer the said property. And whether the permanent improvements herein described have not been made and do not now exist on the said portions of the said tracts of land, and whether they have not the value and whether the amount of expenses in making the same was not incurred as hereinbefore stated and charged. And whether any crops which may be growing on the said tracts are not made with the labor and at the expense of the complainants.

And that the value of the said permanent improvements made as aforesaid upon the said land or of the expense incurred in making the same, may be ascertained and determined by this Court, and that the defendants may be decreed to pay and reimburse to your

orators and oratrixes the said value of the said permanent improvements or the amount of the expenses incurred in making the same, before they enter upon and take possession of the said tracts of land, if said lands are deemed to belong to defendants as the owners thereof. And that the expenses incurred by your orators and oratrixes in making any crops growing upon the same when they are evicted from the said land, may be also ascertained and determined by this Court, and that the defendants may be decreed to pay your orators and oratrixes the amount of said expenses, or that your orators and oratrixes shall have leave to gather and enjoy the same. And that your orators and oratrixes may have such further and other relief as the nature of their case may require, and shall be agreeable to equity.

May it please your Honorable Court to grant unto your orators and oratrixes the writ of subpœna, to be directed to the said Felicite Fletcher Hipp, Maria Antonia Fletcher Hipp, Castro Fernandez, and Jancia Cuesta his wife, Jose Heredario Heredo and Felicite Cuesta his wife, and Augustin Cuesta, commanding them and each of them by a certain day, and under a certain penalty therein to be inserted, to be and appear before this Honorable Court, and then and there to answer the premises, and further to stand to and abide such order and decree therein as shall be agreeable to equity and good conscience. And your orators and oratrixes shall ever pray.

MILES TAYLOR,
Solicitor for Complainants.

Petition for Issue out of Chancery.

Filed 15th March, 1852.

FLETCHER'S HEIRS }
v.
U. JOLY et al. }

U. S. Circuit Court, E. D. of Louisiana.

To the Honorable the Circuit Court of the United States for the Eastern District of Louisiana.

The petition of Celine Babin, widow of Ursin Joly, one of the original defendants, now deceased, acting herein as widow in community and as natural tutrix of Louis Joly, Anatole Joly, and Olympe Joly, and of Lodoiska Joly, wife of Robert Toussan, who joins and assists her herein, the said Louis, Anatole, Olympe, and Lodoiska being the heirs and legal representatives of the said Ursin; of Marguerite Le Blanc, widow of Victor Babin, acting herein as widow in community and natural tutrix of Elise Babin and Mirza Babin, minors, and of Adolphe Babin, the said Elise, Mirza, and Adolphe being the heirs and legal representatives of the said Victor; of Rene Arnous; and of Hortense Le Blanc, widow of Julien Allain, are of the original defendants now deceased, the said widow acting herein

as widow in community and as natural tutrix of Julien Allain, Leocade Allain, and Elodie Allain, minors, and of Toe Allain, wife of Leonidas Reddicke, who joins and assists her herein.

Respectfully represents: That Felicite Fletcher Hipp and Maria Antonia Fletcher Hipp, and Castro Fernandes and *Janera* Cuesta his wife, Jose Herredario Herredo and Felicite Cuesta his wife, and Augustin Cuesta, the complainants in the above-entitled cause, have exhibited in this Court in the said cause an amended bill and bill of revivor, in which they allege among other things "that when their original bill was drafted and filed there was among the papers in this Honorable Court, a writing purporting to be a certificate that a marriage took place between the said James Fletcher and Catharine Hipp, on the day of , 1798; that said paper is now amongst the papers in this cause, though not a part of the record. That they have within the last few days, by advice of counsel, caused a thorough examination to be made in the proper office, and into the facts and circumstances which throw light on the subject, and have ascertained the fact to be, that said paper purporting to be a certificate of marriage is false and forged. That the only evidence of said marriage which the record contains or affords, is a certificate that such marriage took place on the 19th of March, 1802, a true copy of which is herewith (with said amended bill and bill of revivor) filed, marked, and prayed to be taken as a part hereof;" and they then proceed and say, that they "rely and submit to your Honors' considerations if it be material that said certificate last named is not evidence of a marriage between the parties therein named."

And your petitioners further represent that at another place in the said amended bill and bill of revivor, the said complainants allege, "that among the papers in this cause are found certain papers importing the legitimacy of your oratrixes (complainants), Felicitie and Maria Antonia, and also that of the said Adelaide, deceased. That the said papers are delusory and incorrect, or imperfect copies, and tend to deceive. That they were respectively registered as natural or illegitimate children of the said James and Catharine, and so remained registered until the month of December, 1804, when the registry was altered by striking out the word 'natural' or illegitimate and inserting the word 'legitimate,' and otherwise changed so as to produce the false impression which the said copies now on file is calculated to make on the mind, all of which will more fully and at large appear by reference to the documents marked respectively B, C, and D, herewith filed and prayed to be taken as parts hereof." And they, the said complainants, further say in the said amended bill and bill of revivor, "that the said James Fletcher departed this life on the 3d day of June, 1804, before the said certificate of marriage or registry was made or had, and before said alterations in said registry of birth, and which was, as your orators verily believe and charge, procured, made and done with intent to defraud them, by some person or persons to them unknown."

Now your petitioners further represents that the said complainants in their original bill alleged, "That the said James Fletcher left at his decease no other child except your oratrixes" (Felicite and Maria Antonia), "and the said Adelaide, deceased, surviving him, the said James Fletcher, and that he was never married to any other woman save to the said Catharine their mother, and left no other legitimate descendants but your oratrixes and the said Adelaide, deceased." That afterwards they took a judgment *pro confesso* against Joseph Walsh, one of the defendants named in the original bill, and that after having made their proofs a decree was made by this Honorable Court in their favor, in which it was recited that they had ; that the petitioners, long after this decree was made against the said Walsh and in favor of complainants, prepared and filed their answer to the said original bill, and in the said answer, which was filed in this Court on the day of , petitioners alleged among other things, that they denied that these fourths of the said tracts of land described in complainants' bill were vested in complainants and their sister Adelaide, by the dispositions contained in the said last will and testament of the said James Fletcher," and that they further alleged, "that the said James Fletcher was married to the said Catharine Hipp, on the 19th of March, 1794, and that the said tracts having been acquired by the said James Fletcher by purchase in 1797, 1798, and 1800, as alleged in complainants' bill, the same were acquired by him after his said marriage with the said Catharine Hipp and during its continuance. That there was a community of acquests and gains between the said James Fletcher and the said Catharine Hipp his wife, when the said tracts of land were respectively acquired by him, the said James Fletcher. That by law the ownership of the said tracts of land were vested in the said community. That one undivided half of the same was the property of the said Catharine Hipp, as partner in the said community. And that the said James Fletcher could only dispose of one undivided half of the same by testament."

And your petitioner further represents, that the said amended bill and bill of revivor, exhibited some time after their said answer was filed in the cause, was answered by them, which said answer was filed in the cause on the day of , 1852, and that in the said answer petitioners say, that to the best of their knowledge, remembrance, and belief, "they are informed, and verily believe, that the complainants did produce the said certificates to which they refer in the said amended bill and bill of revivor, and that they did file them and all of them, and make them all a part of the record of this cause, on or about the 17th of March, 1846. That they are informed and verily believe that they were made use of as evidence in the *in the* proceedings had in this case against Joseph Walsh, one of the defendants to the original bill filed in this cause, and which said proceedings, after the taking of a judgment pro confesso against him,

the said Walsh, were terminated by a decree against him and in favor of the complainants, at or about the April Term, of 1848, of this Honorable Court, as will be seen by reference to the records of the case and to the decree, which will be found therein." And that they further say and allege, in another part of the said answer, "that they (meaning complainants) have always, as defendants are informed and verily believe, hitherto alleged, that they were the legal and forced heirs of the said James Fletcher, which necessarily implies, that they were born in lawful wedlock, and were the issue of a marriage between the said James Fletcher and the said Catharine Hipp, and that having so alleged themselves to be the legal and forced heirs of the said James Fletcher, and having produced and filed in the Court written proof of a marriage between the said James Fletcher and the said Catharine Hipp, which shows that the said marriage took place on the 19th of March, 1794, for the purpose of establishing these allegations, the defendants aver and believe that complainants cannot now in law be permitted to deny the said marriage, or to show that the written proof or evidence offered, furnished, and produced by themselves was false, fraudulent, and forged, or to contradict the same, and show that it took place at any other time, or to impeach and destroy the validity and effect of the evidence furnished, and filed by them as aforesaid."

And now your petitioners would respectfully represent, that in this stage of the cause it becomes important and material that one of the facts asserted and alleged by the defendants, to wit,—that the said certificate of marriage and the certificates of birth, now among the papers of the cause, and filed therein on the day of , 1846, were produced, furnished, and filed by the complainants, and made a part of the record of the cause, and that the same were made use of in evidence by complainants in the proceedings aforesaid in this cause against Joseph Welsh, should be tried and determined before the hearing of the same on its merits; and that they are informed and believe that the Court is authorized and empowered to direct an issue to be made up and tried, for the settlement and determination of the facts involved in the said allegation.

Wherefore your petitioners pray, that an issue may be ordered to be made out of Chancery, for the trial of the said question of fact by a jury according to law, and that the said issue may be tried at such time as this Honorable Court may order. Miles Taylor, solicitor for petitioners.

Minutes. December Term, 1851.

New Orleans, Tuesday, 16th March, 1852. Court met pursuant to adjournment. Present, Hon. Theo. H. McCaleb, District Judge; absent, Hon. J. McKenley, Presiding Judge.

Motion.

FLETCHER'S HEIRS
v.
URSIN JOLLY & als. } 1285.

Miles Taylor, of counsel for the defendants in this cause, moved the Court, on filing a petition therefor, for an issue out of Chancery, to be made for the determination of certain facts set forth in said petition. Whereupon, after argument by Daniel Mayes, Esq., solicitor for complainant, and Miles Taylor, solicitor for defendants, the application was submitted for the consideration of the Court.

Minutes. December Term, A. D. 1851.

New Orleans, Friday, 23d April, 1852. Court met pursuant to adjournment. Present, Hon. Theo. H. McCaleb, District Judge. Absent, Hon. J. McKenley, Presiding Judge.

Order.

FLETCHER'S HEIRS
v.
URSIN JOLLY & als. } 1285.

This cause having been argued and submitted on a former day of this term, on the petition presented by the defendants, praying an issue out of Chancery, for the purposes therein set forth, and the Court, having maturely considered the same, doth now order, that a feigned issue be made to try by a jury of the country whether the said certificate of marriage and the said certificates of birth, described in said petition, now among the papers of the cause, and filed therein, were produced, furnished, and filed by the complainants, and made a part of the record of the cause, and whether the same were made use of in evidence by complainants in the said proceedings, in said cause, against Joseph Welsh. And it is further ordered, that the said issue be tried by a jury, on the law side of this Court; that the petitioners and defendants shall make up the said issue; and that the same shall be brought to trial, upon the usual notice. And it is further ordered that the papers on file in the said cause may be offered in evidence upon the trial of the said issue, subject to all legal objections; and that the parties respectively shall be at liberty to introduce any further evidence on the trial of the said issue.

Agreement.

Filed 4th May, 1852.

FLETCHER'S HEIRS
v.
U. JOLLY & als.

U. S. Circuit Court, E. D. of Louisiana.

Whereas, owing to the absence of the other defendants in this

cause from the city, when the answers of the defendants to the original and amended bill, and to the amended bill and bill of revivor, were filed respectively, Rene Arnous, one of the defendants, alone made the oath required in relation to the contents of the said answer.

It is, therefore, now agreed that the said answers shall have the same effect as though all the other defendants had made the same oath with respect to the said answers respectively as that already made by the said Arnous.—Daniel Mayes.

Issue out of Chancery.

Filed 10th May, 1852.

FLETCHER'S HEIRS
v.
U. JOLLY & als.

U. S. Circuit Court, E. D. of Louisiana.

Pleas and proceedings before the Honorable the Circuit Court of the United States, for the Fifth Circuit and Eastern District of Louisiana, being the April Term of 1852 of the said Court, held at the City of New Orleans, in the district aforesaid, on the day of May, 1852.

Be it remembered, that on the in this same term, before the said Honorable the Circuit Court of the United States, comes Celine Babin, widow of Ursin Joly, acting as widow in community, and as natural tutrix of Louis Joly, Anatole Joly, and Olympe Joly, minors, and Lodoiska Joly, wife of Robert Tousson, who joined and assisted her, the said Louis, Anatole, Olympe, and Lodoiska, being the heirs and legal representatives of the said Ursin Joly; Marguerite Le Blanc, widow of Victor Babin, acting as widow in community and natural tutrix of Elise Babin and Mirza Babin, minors, and Adolphe Babin, the said Elise, Mirza, and Adolphe being the heirs and legal representatives of the said Victor Babin; Rene Arnous and Hortense Le Blane, widow of Julien Allain, acting as widow in community, and natural tutrix of Julien Allain, Leocade Allain, and Elodie Allain, minors, and Zoe Allain, wife of Leonidas Reddicke, who joined and assisted her, all citizens of the State of Louisiana, residing in the Parish of Iberville, by Miles Taylor, their attorney, and bring into Court, now here, their certain petition against Felecite Fletcher Hipp, Maria Antonia Fletcher Hipp, Castro Fernandes and Javiera Cuesta, his wife, and Augustin Fletcher Hipp, and Jose Herredario Herredo and Felecite Cuesta, his wife, all aliens, the said Maria Antonia Fletcher Hipp being a subject of the Queen of Spain, and the said Felecite Fletcher Hipp, Castro Fernandes, and Javiera Cuesta, Jose Heredario Herredo and Felicite Cuesta, and Augustin Cuesta being citizens of the Republic of Mexico, which said petition is in the words following, to wit:

To the honorable the Circuit Court of the United States in and for the Eastern District of Louisiana.

The petition of Celine Babin, widow of Ursin Joly, herein acting as widow in community, and as natural tutrix of Louis Joly, Anatole Joly, and Olympe Joly, minors, and Lodoiska Joly, wife of Robert Tousson, who joins and assists her herein, the said Louis, Anatote, Olympe, and Lodoiska, being the heirs and legal representatives of the said Ursin Joly; Marguerite Le Blane, widow of Victor Babin, acting herein as widow in community and natural tutrix of Elise Babin and Mirza Babin, minors, and Adolphe Babin, the said Elise, Mirza, and Adolphe being the heirs and legal representatives of the said Victor Babin, René Arnous, and Hortense Le Blane, widow of Julien Allain, herein acting as widow in community and natural tutrix of Julien Allain, Leocade Allain, and Elodie Allain, minors, and Zoe Allain, wife of Leonidas Reddicke, who joins and assists her herein, all citizens of Louisiana, residing in the Parish of Iberville, respectfully represents:

That they are informed and believe that Felicité Fletcher Hipp, Maria Antonia Fletcher Hipp, Castro Herredo, and Felicite Cuesta his wife, and Augustin Cuesta, have always alleged that the said Felicité Fletcher Hipp, Maria Antonia Fletcher Hipp, and Adelaide Fletcher Hipp, now deceased, the mother of the said Jaivera Cuesta, Felicité Cuesta, and Augustin Cuesta, were the legal and forced heirs of James Fletcher, deceased, which necessarily implies that they were born in lawful wedlock, and were the issue of a marriage between the said James Fletcher and their mother Catharine Hipp, now also deceased. That having so alleged themselves to be the legal and forced heirs of the said James Fletcher, and having brought their certain bill of complaint against the said Ursin Joly, now deceased, the said Victor Babin, also now deceased, the said René Arnous, and the said Julien Allain, also now deceased, and one Joseph Walsh, all citizens of the State of Louisiana, claiming from them the property in said bill described as therein set forth, which said bill of complaint was exhibited and filed on the chancery side of this honorable Court on the 29th day of November, 1844, they the said defendants, who were also complainants in the said bill, produced and filed the following described papers in the said cause on the 17th day of March, 1846, and made them a part of the record therein. To wit:

1st. A paper purporting to be a certificate of marriage, showing that the said James Fletcher was married to the said Catharine Hipp according to the rites of the Catholic Church, on the 19th of March, 1794, which said paper was in the Spanish language.

2d. A paper purporting to be a certificate of baptism, according to the rites of the Catholic Church, of the said Felicité Fletcher Hipp, and showing that she was so baptized on the 13th of March, 1797, which paper was in the Spanish language.

3d. A similar paper also in Spanish, showing the baptism of the said Adelaide on the same day, 13th of March, 1797, &c.

Fourth. A similar paper, also in Spanish, showing the baptism of the said Maria Antonia Fletcher Hipp, all of which said papers are still on file in the said cause. And your petitioners further represent, that they, the said defendants before named, complainants in the said bill, procured translations of the said papers, to be made at their expense, by the interpreter or translator of this Court, into the English language, and filed the said translations among the papers of the said cause, on the day of and make them also a part of the record of the same.

And your petitioner further represents, that the said defendants before named, complainants in the said bill of complaint brought and exhibited on the chancery side of this Honorable Court, as aforesaid, as they are informed, and verily believe, did make use of the said papers, and produce and offer them as evidence in the proceedings had in the said cause in chancery, against the said Joseph Walsh, one of the defendants to the said bill of complaint, and which said proceedings, after the taking of a judgment *pro confesso* against him, the said Walsh, were terminated by a decree against him and in favor of complainants for a portion of the property claimed in said bill, at or about the April Term of 1848 of this Honorable Court.

Wherefore your petitioners pray, that the said Felicite Fletcher Hipp, Maria Antonia Fletcher Hipp, Castro Fernandes and Javiera Cuesta, his wife, Jose Heredero Herredo and Felicite Cuesta his wife, and Augustin Cuesta, may be cited before this Court; and that after legal proceedings had, it may ordered, adjudged, and decreed:

First. That the said paper in the Spanish language purporting to be a certificate of marriage, and showing that the said James Fletcher was married to the said Catherine Hipp, according to the rites of the Catholic Church, on the 19th of March, 1794, and the papers in the Spanish language purporting certificates of baptism, according to the rites of the Catholic Church, and showing that the said Felicite Fletcher Hipp was baptized on the of that the said Adelaide was also baptized on the of and that the said Maria Antonia Hipp was baptized on the of which are now on file in the said cause now depending on the chancery side of this Court, begun by a bill of complaint brought and exhibited as aforesaid, by the said defendants, on the 29th day of November, 1844, against the said Ursin Joly, the said Victor Babin, the said Julien Allain, and your petitioner, Rene Arnous, were produced and filed by the defendants herein, the complainants in said bill, in the said cause in chancery, on the 17th day of March, 1846, and were by them made a part of the record in said cause.

Second. That they, the said defendants herein, and complainants in said bill, procured translations of the said papers in the Spanish language so filed by them, and made part of the record in the said cause, on the chancery side of this Court, to be made into the English

language at their expense, by the interpreter or translator of this Court, and filed the said translations among the papers of the said cause, and made them a part of the record of the same, on the day of ; and—

Third. That they, the said defendants herein, and complainants in said bill, after having taken a judgment *pro confesso*, against Joseph Walsh, as aforesaid, in the said cause, introduced the said papers as a part of their proofs on the hearing, after the taking of the said *pro confesso*, upon which a decree was made, and given in their favor, and against the said Joseph Walsh, for a portion of the property claimed in said bill, at or about the April Term of 1848, of this Honorable Court.

And your petitioners further pray for a trial by a jury of the country.—Miles Taylor, Attorney for Petitioners.

And the said Felicite Fletcher Hipp, Maria Antonia Fletcher Hipp, Castro Fernandes and Javiera Cuesta, his wife, Jose Heredario Herredo and Felicite Cuesta, his wife, and Augustin Cuesta, the defendants named in the petition against them filed herein, came into Court by the undersigned, their attorney, and for answer to the said petition say, that they deny all and singular, the allegations in said petition contained.

Agreement as to Issue out of Chancery.

Filed June 14th, 1854.

U. S. Circuit Court, E. D. of Louisiana.

HEIRS OF FLETCHER
v.
URSIN JOLY & als.

It is agreed that a judgment or decree be entered upon the issue out of Chancery, heretofore ordered in this cause in favor of the petitioners, and against the complainants, as though a jury had been duly empannelled for the trial of said issue, and after hearing evidence they had found all the facts set forth in the petition of defendants, as prayed for in the prayer of said petition: and that the said judgment or decree shall have the same force and effect as though it were rendered in due course of law upon a verdict of a jury as aforesaid. Smiley & Perin, for Complainants.

Admissions.

Filed June 14th, 1854.

U. S. Circuit Court.

FLETCHER'S HEIRS
v.
JOLY et al.

It is admitted that the various acts of sale, the judicial proceed-

ings, and the transmissions by inheritance, under which the defendants claim title to the land in dispute, from Daniel Clark down, are correctly set forth in their answer.

It is admitted, that the purchase-money of every sale mentioned in said answer, whether private or judicial, was paid as stated therein, except as to the sale from Mme. Hipp to D. Clark. It is admitted, that the persons holding under the various acts of sale set forth in the answer, have had the continuous, open, and corporeal possession of the land in dispute, under titles described in the answer, since the 23d of June, 1806.

It is agreed that the defendants shall be at liberty to plead prescription in an amended answer without oath, as well as any other matters of defence.

It is further admitted, that the lands in controversy yield revenues, and that improvements have been put on said lands since the year 1806; but whether the said defendants are to account for said revenues, and whether said improvements were or are useful to complainants, and whether defendants can claim compensation for the same, and the periods of time during which said claims are to be enforced, are questions to be submitted to the Court; and if allowed on either side, an account is to be taken thereof after the decree, under the order of the Court.

That the said Adelaide, Felicite, and Maria Antonia, who were the testamentary heirs of the said James Fletcher, were born on the respective dates as set forth in the copies of the certificates dated on the 11th of March, 1851; and that the said Augustin, Javiera, and Felicite Cuesta are the legitimate and legal heirs of the said Adelaide. That the said James Fletcher died in 1804; and that in the year 1807 the said Catherine removed with her said children to Vera Cruz, and that none of said complainants have resided in Louisiana since the date last above mentioned. That Pierre A. Cuvillier, the attorney for complainants in their suits in Iberville, died on the 8th or 9th of April, 1835, before the dates of the non-suits in said causes.

It is further agreed, that all documents shall be received in evidence that are certified to by any of the notaries, clerks, or parish judges of the State, without any further authentication than the certificate and seal of said officers.

The defendants will offer in evidence the following documents, which are admitted to be true copies of genuine originals or true originals, and the handwriting of the original signers of which are also admitted in:—

1. An account between Catharine Hipp, widow Fletcher, and Daniel Clark, dated 3d Sept., 1807, and marked No. 3, P. B. Rr.

2d. Receipt by Ramon Canes to the widow Fletcher, passed before Pre. Pedesclaux, Notary Public, in New Orlans, on the 14th of May, 1806, marked C. C.

3d. Petition of Catharine Fletcher, late Catharine Hipp, to the Superior Court of the Territory of Orleans, for the sale of the land dated 18th June, 1806, and order thereon of the same date, marked R. R.

4th. Account between Ramon Canes and James Fletcher, dated October 7, 1804, and receipt of Ramon Canes in favor of Daniel Clark on the back thereof, dated 14th May, 1806, marked T. T.

5th. Daniel Clark, guarantee to Jr. Btee. Lebs, dated 11th March, 1806, marked No. 2 and 22.

All of which documents were filed in the suit of Adelayde Fletcher et al. *v.* The Executors of Antonio Cuvillier Sr. et al., reported in the 4th and 10th vols. of the Louisiana Reports, and withdrawn since the decision of that case.

That the copy of the certificate of marriage, dated March 11th, 1851, is the true copy from the original books in the Church of St. Louis, and that the one purporting to be a copy taken in 1804 is not a correct copy in its reference to the date of the alleged marriage.

It being understood that this admission is not to affect in any way the question made by defendants as to the rights of plaintiffs to contest the date of said alleged marriage as shown in the papers filed by them, in the case in 1846; and that the said admission cannot be made use of in the cause, until the Court has decided that the plaintiffs may contest the date of the said alleged marriage. New Orleans, June 14, 1854. Smiley & Perrin, for Complainant; Janin & Taylor, for defendants.

Amended Answer.

Filed June 14th, 1854.

United States Circuit Court, Eastern District of Louisiana.

FLETCHER HEIRS
v.
URSIN JOLY ET ALS.

In Chancery.

To the Honorable the Circuit Court of the United States for the Eastern District of Louisiana.

The amended answer of Celine Babin, widow of Ursin Joly, herein acting as widow in community and as natural tutrix of Louis Joly, Analote Joly, and Olympe Joly, and of Lodoiska Joly, wife of Robert Toussan, who joins and assists her herein, the said Louis, Analote, Olympe, and Lodoiska, being the heirs and legal representatives of the said Ursin Joly; of Margaret Le Blane, widow of Victor Babin, acting herein as widow in community and natural tutrix of Elise Babin and Mirza Babin, minors, and of Adolphe Babin, the said Elise, Mirza, and Adolphe being the heirs and legal representatives

of the said Victor Babin; of Rene Arnous; and of Hortense Le Blane, widow of Julien Allain, herein acting as widow in community, and natural tutrix of Julien Allain, Leocade Allain, and Elodie Allain, minors, and of Zoe Allain, wife of Leonidas Reddick, who joins and assists her herein, to the bill, the amended bills, and bills of revivor of the said Felicite Fletcher Hipp, and Maria Antonia Fletcher Hipp, of Castro Fernandez, and Javiera Cuesta his wife, Jose Heredario Herredo and Felicite Cuesta his wife, and Augustin Cuesta, and of Thomas Corsal:

The defendants now, and at all times, saving and reserving to themselves all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties and other imperfections in the said complainants' original bill and amended bills and bills of revivor contained, say, that they have very lately ascertained various facts which they are advised and believe have a material bearing upon the case, and which they therefore beg leave to set up with other matters hereafter fully set forth as their further answer to the said bill, amended bills, and bills of revivor of complainants.

And the defendants further answering say, that the said James Fletcher was indebted to Francisco Ramon Canes; that in order to secure the said Canes, the said Fletcher had passed a notarial act of sale to the said Canes on the 1st of December, 1801, of the lands in dispute in this case and of another and larger tract of land. That in his last will, the said James Fletcher directed the sale of the said lands, if their reconveyance could be procured from the said Canes, and that the proceeds should be first applied to the payment of his debts; that the estate of the said Fletcher was indebted to the said Canes in the sum of $3811 87½. That the said Canes required the payment of this sum before he was willing to surrender the title of said lands; that the said Catharine Hipp, the widow and testamentary executrix of said Fletcher, applied to the late Daniel Clark to befriend her, and to advance the said amount due to said Canes; that accordingly the said Clark paid to the said Canes the said sum of $3811 87½ on May 10th, 1806, as appears from the original account and receipt approved by the said widow Fletcher, and herewith filed as document T. T.; and that thereupon the said Canes, on the 14th of May, thereafter, executed a notarial receipt to the said Catharine Hipp for the said payment, and on the same day executed a notarial act, in which he did, and that he ceded and transferred the said lands to the heirs of said Fletcher, which said act was accepted by the said Catharine Hipp. That thereafter, on the 18th of June, 1806, the said Catharine Hipp filed a petition in the late Superior Court of the Territory of Orleans, setting forth the aforesaid facts, and praying to be permitted to sell the said lands, and that on the day of thereafter, the Honorable J. B. Prevost, one of the Judges of the said Superior Court, by the organization of which one judge constituted a quorum, authorized the said Catherine Hipp to make

said sale for the best price that could be obtained, and in the most suitable manner, as will be seen by the document marked R. R. herewith filed; and that on the 23d day of June, 1806, she the said Catharine Hipp, made a reconveyance of said lands to the said Daniel Clark, by notarial act as before set forth, for the price and sum of $9000 cash, the payment whereof was duly acknowledged in the said act.

And the defendants now aver, that in the premises the legal title to the said lands never was vested in the heirs of the said James Fletcher. That the said Catherine Hipp was without any legal authority to receive or accept the said reconveyance for and in behalf of the said heirs, and that it was not designed that the legal title should so vest. That the said reconveyance would not have been made but for the payment of the said sum of $3811 87½, due by the said James Fletcher to the said Canes; that the said Canes was unable to pay the remainder of the price stipulated for the said lands in the sale to him, and the said heirs were unable to pay the said sum of $3811 87½ to him; so as to obtain the reconveyance to them absolutely; that the object of these transactions was to enable the said heirs to realize the value of the said lands, and that the effect of the same was, in point of fact, was to place the said Daniel Clarke in the same position that the said Canes before occupied, so that the title to the said lands, which could or would have vested in the said Canes, if he had fully complied with the stipulations of the said sale to him, was vested in the said Clarke. And defendants further aver, that the estate of the said James Fletcher and his said heirs, have had the full advantage and benefit of the said sale, made by the said James Fletcher to the said Canes. Wherefore they say that in equity and good conscience, his said heirs are not entitled to recover the said lands or any part thereof, and now plead the said facts in bar to complainants' bill.

And defendants further answering say, that the said Daniel Clarke, so far from wishing to injure or defraud the children of the said James Fletcher and Catherine Hipp, acted as their disinterested friend and protector, as shown by the facts just mentioned, and is more fully shown by the documents herewith filed, marked 22 and D D, from which it will be seen, 1st. That the said Clarke, on the day of , became the security for the said Catherine Hipp for the advance of $4000, to be appropriated for the maintenance and support and education of the said minor heirs, and that he also gave the estate of the said Fletcher credit for the said sum of $3811 87½, advanced by him to pay the said Canes as aforesaid, on the 10th of May, 1806, and gave it credit for various other sums advanced by him for its service and advantage, until the 3d of September, 1807, when the said sums were finally paid by applying thereto the proceeds of certain lands sold by him for account of the said Catherine Hipp.

And defendants further answering say, that the said James Fletcher was greatly in debt at the time of his death, and that the succession left by him at his death, and the community existing between him and the said Catherine Hipp, his wife, were totally insolvent. That the said Adelaide Fletcher Hipp, Felicite Fletcher Hipp, and Maria Antonia Fletcher Hipp, the legal and instituted heirs of the said James Fletcher, the complainants, either personally or by representation, being minors at the death of their said father, could accept his succession only under benefit of inventory, and both in law and under the provisions of the said will were entitled only to a residuary interest in what might remain in the said succession and in the community after the debts of the said Fletcher and of the said community were paid. And that the debts of the said succession and of the said community being greater than the assets belonging to the same, the said complainants are without any interest whatever in the succession of their said father, the said Fletcher, and have not nor can have any right to any specific or particular property which was or is comprised in the same.

And defendants further answering say, that there has been no liquidation and settlement of the succession of the said James Fletcher and of the community existing between him and the said Catherine Hipp, his wife. That the debts due and owing by the said James Fletcher and by the said community at his death, and which by law and by the provisions of said will were to be paid out of the property belonging to the same were never satisfied. And that in the premises the complainants cannot in law or in equity and good conscience have and maintain an action for the lands described in their bill of complaint, in the capacity of heirs or legatees of the said Fletcher as therein set forth, or in any other. Wherefore, defendants plead the fact, that there has been no settlement and liquidation of the said succession and of the said community in bar to complainants' bill.

And defendants further answering say, that they and those through whom they derive their titles to the said lands have held and possessed the same in good faith and in virtue of just titles since the 25th day of August, 1807, and that ever since the said 25th day of August, 1807, they and those through whom they derive title have held and possessed the said lands in fact and in right as owners, and that their said possession has been continuous and uninterrupted, peaceable, public, and unequivocal, and that by means of said possession they have acquired a good and complete title to the same by prescription, wherefore they now invoke the prescription of ten and twenty and thirty years, and plead the said possession in bar to complainants' bill.

And defendants further answering say, that as possessors in good faith they are entitled to make the fruits and revenues gathered and received by them respectively from the said lands their own, and that in the event of a recovery of the said lands by the said com-

plainants, they, complainants, would not be entitled to claim and recover any fruits and revenues gathered and received by them, the defendants, prior to the filing of the bill exhibited herein by complainants.

And defendants further answering say, that if complainants, in the event of a recovery of said lands, were entitled to claim and recover the fruits and revenues gathered and received by defendants (which they do not admit but expressly deny), then their claim to any such fruits and revenues gathered and received by defendants three years prior to the exhibiting of said bill would be barred by the prescription of three years, and defendants now reserve the right to plead the said prescription, if at any time hereafter it may become necessary to complainants' claim for fruits and revenues, rents, or issues from the said land.

And defendants further answering say that the said Adelaide Fletcher Hipp, Felicite Fletcher Hipp, and Maria Antonia Fletcher Hipp, by failing to provoke a liquidation and settlement of the succession of the said James Fletcher, and of the community existing between him and the said Catherine Hipp his wife, after they attained the age of majority; and by failing to prosecute the suit which they alleged was formerly instituted by them for the recovery of the lands now claimed; and by failing to prosecute their pretended claim after the said suit was dismissed, and leaving this matter to be investigated after all memory of the transactions has been lost, and the witnesses to the same have been *recovered* by death, have been guilty of laches. And defendants, therefore, say that in equity and good conscience, the said complainants cannot now have and maintain the action set forth in their said bill, and they now plead the said laches in bar to the said bill.

And defendants deny that there is any other matter, cause, or thing in the said complainants' bill, amended bills, and bills of revor contained material or necessary to make answer unto, and not herein or before well and sufficiently answered, conferred, traversed, avoided, or denied, is true to the knowledge or belief of these defendants. All which matters and things these defendants are ready to maintain and prove as this Honorable Court shall decide, and pray to be hence dismissed with their reasonable costs. Louis Janin, Miles Taylor, Solicitors for Defendants.

Replication to Amended Answer.

Filed by consent, written below June 14th, 1854.

In Chancery, U. S. Circuit Court, Eastern District Louisiana.

The replication of Felicitie Fletcher Hipp et als., Complainants, to the amended answer of Celine Babin et als., defendants.

These repliants, saving and reserving to themselves now and at all times hereafter, all and all manner of benefit and advantage of exception, which may be had or taken to the manifold insufficiencies

of the said answer, for replication thereto say, that they will aver, maintain, and prove their bill of complaint to be true, certain, and sufficient in law to be answered unto, and that the said answer of the said defendants is uncertain, untrue, and insufficient to be replied unto by these repliants; without this that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true. All which matters and things these repliants are and will be ready to aver and maintain, as this Honorable Court shall direct, and pray as in their said bill they have already prayed. Smiley & Perin, Solicitors for complainants.

We consent that this be filed. Janin & Taylor, Solicitors.

Answer to Cross Bill.

Filed June 14th, 1854.

In the Circuit Court of the United States for the Fifth District and Eastern District of Louisiana.

The answer of Maria Antonia Fletcher, a citizen of Spain, Augustin Cuesto, Casto Fernandez, and Javiera Cuesto, and Fletcher, his wife, Jose Desedero Herreno, and Felicitas Cuesta, and Fletcher, his wife, and Thomas Corrall, citizens of Mexico, defendants to the cross bill of Celine Babin, Louis Joly, Aristude Joly, Olymphe Joly, Lodoiska Joly, Robert Tousson, Margarite Le Blanc, Eliza Babin, Mirza Babin, Adolphe Babin, Rene Arnous, Hortense Le Blanc, Julien Allain, Leodale Allain, Elodie Allain, Zoe Allain, and Leonidas Reddick, complainants.

These defendants now, and at all times hereafter, saving and reserving to themselves all manner of benefit and advantage of exception to the many errors and insufficiencies in complainants' said cross bill contained, for answer thereto, or unto so much or such parts thereof as these defendants are advised is material to make answer unto, they answer and say.

They admit that complainants are respectively in possession of parts of said tracts of land as stated in their said cross bill. They admit that improvements have been put upon said tracts of land, but having no knowledge of the amount or value of said improvements, nor the time when the same were put upon said tracts of land, they do not admit the same as charged in said cross bill, but require strict proof thereof.

These defendants aver that said tracts of land in their natural state, and with the natural growth of timber thereon, would be more valuable than the same now are with all the improvements put thereon by complainants. And these defendants deny that the value of said lands has been enhanced by any improvements put thereon by complainants or their vendors. And these defendants deny that complainants are possessors in good faith.

And defendants further answering, deny that they claim title through the said Catherine Hipp, and charge that the sale of the lands in controversy made by her was in violation of law, in fraud of the rights of these defendants, and void; and they further deny that they received any property of any kind soever by, from, or through the said Catherine Hipp, and deny that they are bound by, or liable for her warranty.

And these defendants submit to this Honorable Court that all and every of the matters in said complainants' cross bill mentioned and complained of, are matters which may be tried and determined at law, and with respect to which the said complainants are not entitled to any relief from a Court of equity. And these defendants hope they shall have the same benefit of this defence as if they had demurred to complainants' said cross bill.

And having fully answered, defendants pray to be hence dismissed, &c. Smiley and Perin, for defendants.

Bill of Revivor and Supplement.

Filed June 14th, 1854.

To the Judges of the Circuit Court of the United States for the Fifth District and Eastern District of Louisiana.

Complaining: Showeth unto your Honors, your orators Maria Antonia Fletcher, a citizen of Spain, Augustine Cuesta, Casto Fernandez and Javiera Cuesta y Fletcher his wife, Jose Desediris Herrero and Felicitas Cuesto y Fletcher his wife, and Thomas Corral, citizens of Mexico, all of whom are aliens.

That your orators, except the said Thomas Corral, did on or about the day of , A. D. 18 , with Felicite Fletcher, since deceased, exhibit their original bill of complaint in this Honorable Court, and also on or about the day of their annexed bill and bill of revivor against Celine Babin, Louis Joly, Aristide Joly, Olymphe Joly, Lodoiska Joly, Robert Tousson, Marguerite Le Blanc, Eliza Babin, Mirza Babin, Adolphe Babin, Rene Arnous, Hortense Le Blanc, Julien Allain, Leodale Allain, Elodie Allain, Zoe Allain, and Leonidas Reddick: Thereby claiming certain tracts of land therein set forth and described for the substance of said bills, and relief therein prayed for, particular reference is made to said original bill and amended bill and bill of revivor. And the said defendants being duly served with process of subpœna for that purpose, said defendants put in their answers thereto, and your orators replied thereto, as by said pleadings and other proceedings in said cause now remaining of record in said Court, reference being thereunto had will more fully appear.

And your orators further show unto your Honors that on or about the day of the said Felicite Fletcher departed this life without issue, leaving your orator, Thomas Corrall, her whole

estate both real and personal, and the said suit and the proceedings therein having become abated by the death of the said Felicite, your orators are advised they are entitled to have the same revived in the name of said Thomas Corral, and restored to the same condition in which they were at the death of said Felicite.

And your orators, by way of supplement, show unto your Honors that the said Felicite Fletcher in her lifetime duly made and executed an act of donation in writing, in such manner as is required for passing real estates, bearing date the day of and thereby transferred to your orator, Thomas Corral, all her estate both real and personal, as by said act of donation, reference being thereunto had, will more fully appear.

May it please your Honors to grant the writ of subpœna, directed to defendants, requiring them to answer the matters herein set forth, and your orators pray for relief as prayed for in their original and amended bills. And your orators, &c. &c.—Smiley & Perin, attorneys for complainants. Indorsed: We consent that this be filed.—Janin & Taylor, solicitors.

Agreement Marked X.

Filed June 14th, 1854.

FLETCHER'S HEIRS
v.
JOLY et al.

It is admitted that Etienne Carroby, of the city of New Orleans, had for many years prior to Cuvilier's death, the power of attorney of the plaintiffs. That after Cuvilier's death, which occurred on the 8th or 9th of April, 1835, the plaintiff sent a power of attorney to Gordon Forestall & Co., a mercantile house then established at New Orleans, who employed a lawyer to examine the condition and prospects of their claims to the lands in dispute in this suit. That the plaintiffs were informed of this by Gordon Forstall & Co.; that Felicite Fletcher, one of the testamentary heirs of said Fletcher, wrote to said attorney in August, 1841, and that said attorney wrote to the plaintiffs, either after or shortly before the date of that letter, giving at length his views of their claims derived from a personal examination of the records of the suits in the Parish of Iberville, and informing them that unless they sent out certain powers of attorney, and gave him definitive instructions, he could do nothing in the matter; that no answer having been made by the plaintiffs to said letter, although it was received by the plaintiffs, the said attorney took no other steps in the matter, and did not consider himself employed by the plaintiffs. That said attorney never claimed or received any fee from the plaintiffs, or the reimbursement of his personal expenses, and that when said attorney was informed by F. Perin, Esq., that

he, said Perin, had been employed by the plaintiffs, he placed at the disposal of said Perin all the papers and memoranda he had collected in relation to the claims of the plaintiffs.—Smiley & Perin, solicitors for complainants. Janin & Taylor, solicitors for defendants.

Sale from D. Clark to P. B. Boisfontaine.

Filed June 14th, 1854.

Be it that this day, before me, John Lynd, Notary Public, in and for the City of New Orleans, personally appeared Daniel Clark, of this city, Esquire, who declared that for and in consideration of the sum of seven thousand dollars to him in hand paid by Pierre Berron Boisfountaine, the receipt whereof is hereby acknowledged, he does, by these presents, grant, bargain, and sell unto the said Pierre Berron Boisfountaine, his heirs and assigns, the said party being also present and accepting, all that equal undivided half part of a tract of land laying at Manchac, on the east bank of the Mississippi, bounded on the upper side by lands of Madam Widow Hinson, and on the lower side by land reserved by the Spanish Government for the fort, with the whole depth, as he this appearer acquired the same by act passed before Pedro Pedesclaux, Notary Public of this city, on the twenty-third day of June, 1806, with all the profits, commodities, hereditrements, and appurtenances whatsover, to the same belonging or in anywise appertaining, and all the estate, right, titles, interests, claim, and demand whatever of him, the said Daniel Clark, in and to the said undivided half of said tract of land. To have and to hold the said land *excietua* unto the said Pierre Berron Boisfountaine, his heirs, and assigns, to the only proper use and behoof of the said P. B. Boisfountaine, to his heirs and assigns forever. And the said Daniel Clark, for himself and his heirs, the said land *et lietera*, against all and every *every* person or persons whomsoever, to the said Pierre Berron Boisfountaine, his heirs and assigns, shall and will warrant, and forever defend by these presents. Done and passed at the City of New Orleans, in presence of George Pollock and Antoine Froumentin, witnesses, who have hereunto signed their names, together with the parties and me, the said Notary, this sixth day of March, one thousand eight hundred and eleven. Thus signed on the record.—Daniel Clark; P. Berron Boisfountaine; George Pollock; Aine. Fromentain; John Lynd, Notary Public.

I do certify this present copy to be conform to the original deed recorded in my archives. In testimony whereof I have hereunto set my hand and seal of office at New Orleans, August 15th, 1818. —(Signed) John Lynd, Notary Public. A true copy.—M. Moreno, Dep. Cox. [SEAL.]

Sale from Clark's Executors to Antoine Cavilier.

Filed June 14th, 1854.

State of Louisiana, City of New Orleans.

Be it known, that this day, before me, John Lynd, Esq., notary public in and for said city duly commissioned, personally appeared Richard Relf, executor testamentary of late Daniel Clark, and attorney in fact for Mistress Mary Clark, sole heiress, who declared that, for the consideration hereinafter mentioned, he, in his said quality, does by these presents grant, bargain, and sell unto Antoine Cavilier, the elder, his heirs and assigns, the said party being also present and accepting, all that equal undivided half part of a tract of land situated at Manchac, on the east bank of the River Mississippi, bounded on the upper side by lands of the Widow Hinson, and on the lower side by lands reserved by the Spanish government for the fort, with the whole depth that was acquired by the said Daniel Clark, by an act passed before Pedrou Pedesclaux of this city, notary, 23d June, 1806, with all the rights, profits, commodities, servitudes, and appurtenances to the same belonging or in anywise appertaining: Being the same that the said Daniel Clark sold and conveyed unto Celestin Saint Maxent, by act passed before me, notary, 6th March, 1811, which act of sale was afterwards, to wit, on the 28th May, 1814, rescinded by sentence of the honorable the District Court for the third district of this State. To have and to hold the said undivided half of said land, and all thereunto belonging, unto the said Antoine Cavilier the elder, his heirs and assigns, to their proper use and behoof for ever. And the said executor and attorney in fact, thereby binds the estate and succession so represented by him, and the said heiress, that they the said land and its appurtenances against all and every person and persons whomsoever, to the said Antoine Cavilier the elder, his heirs and assigns, shall and will warrant and forever defend by these presents. This sale is made for and in consideration of the sum of two thousand five hundred dollars paid to the said Daniel Clark in his lifetime; and of the sum of two thousand two hundred and fifty dollars now in hand paid, and of the promissory note of the said Antoine Cavilier, the elder, payable on the first day of March next ensuing, for the like sum of two thousand two hundred and fifty dollars, receipt of which money and note is hereby acknowledged, making the whole price or consideration equal to the sum of seven thousand dollars. Done and passed at the City of New Orleans, in presence of Carrire and Maveal, witnesses, who have hereunto signed their names, together with the parties, and me the said notary, this first day of August, one thousand eight hundred and fifteen.—(Signed) Richard Relf, senior; Antoine Cavilier, junior; O. Carrire; Maveal; John Lynd, notary public.

1809

I certify the foregoing to be a true copy of the original act extant in my register, according to the law and usage of this State; in faith whereof, I grant these presents under my signature, and the impress of my seal of office at New Orleans, this 2d day of August, 1815.—(Signed) John Lynd, Notary Public.

Recorded in my Register D, at folio 560, No. 283, this day, Baton Rouge, the 5th of February, 1817.—(Signed) Ch. Tessier, P. S., a true copy. M. Morem, Deputy Clerk. [SEAL.]

Record in the case of

JOHN FOWLES
v.
CATHERINE HEPP et al.

From State Court.

Filed June 14th, 1854.

State of Louisiana—Fifth District Court of New Orleans.

JOHN FOWLES
v.
CATHERINE HEPP et al. } No. 1697.

Petition, &c., filed Dec. 15th, 1817.

To the Hon. Joshua Lewis, Judge of the District Court of the First Judicial District of the State of Louisiana. The petition of John Fowles, attorney in fact for the heirs of John Turnbull, deceased, to wit, Catharine Turnbull, widow of John Turnbull; Robt. Jepuple, and Isabella, his wife; John Turnbull; Lewis Sterling, and Sarah, his wife; John Fowles, and Susan, the wife of your petitioner, Walter, Daniel, and James Turnbull; all heirs of the late John Turnbull, deceased, respectfully shows,

That James Fletcher, now deceased, and late of the city of New Orleans, was in his lifetime justly indebted to said John Turnbull, the ancestor of said heirs, for whom petitioner acts as the attorney in fact, in the sum of thirteen thousand five hundred and twenty-three dollars and seventy-five cents, for goods, wares, and merchandise sold by said John Turnbull during his lifetime. And, moreover, your petitioner states that said James Fletcher, during his lifetime, was justly indebted to said Turnbull in other $13,623 75, for money had and received by him to the use of said John Turnbull; and they further state, that said James Fletcher was, during his lifetime, justly indebted to said John Turnbull in other $13,623 75 for moneys paid, laid out, and expended by said John Turnbull in behalf of said Fletcher, all which will be seen by annexed account prayed to be taken as part of this petition, which said sum of money was justly owing and due by said Fletcher to said John Turnbull, the

ancestor of said heirs, during their respective lives. In consideration thereof, the said Fletcher, during his lifetime, became liable and did undertake and promise to pay to said Turnbull said sum of $13,623 75, when thereto requested. Yet to pay the same, or any part thereof, he did wholly refuse, the subsequently and in an amicable manner requested by said Turnbull during his lifetime so to do.

Petitioner further states, that said Fletcher, on day of A. D. , died and left, by his last will and testament, Catherine Hepp, Margaret and Adelaide Hepp, his universal heirs, in consequence of which, they and said heirs of said Fletcher, became liable, and did undertake and promise to pay said Turnbull, during his life, said sum of $13,623 75, owing said Turnbull by said Fletcher, their ancestor; and did accept of said estate, simply, unconditionally, and without the benefit of an inventory, thereby subjecting themselves to the payment of all said Fletcher's debts.

Your petitioner further states, that said John Turnbull, on 24th day of August, 1797, died and left, by his last will and testament, as his heirs, the aforesaid persons, of whom petitioner is attorney in fact. And having, as heirs, became entitled to all the rights and titles and credits of their said ancestor, the said Turnbull, said Fletcher's heirs are justly indebted to them, in said sum of money, which was owing, by said heirs, to said Turnbull, during his lifetime; in consideration of which, they have become liable, and promised to pay the heirs of said Turnbull said sum, when they should be thereto requested. Yet, to pay the same or any part thereof, they have hitherto wholly refused and still refuse, the frequently and amicably demanded.

And petitioner further states, that said heirs of said Fletcher reside, permanently, out of the State of Louisiana, to wit, in the Kingdom of Old Spain, and that they have property within the jurisdiction of this Honorable Court.

Petitioner therefore prays that process of attachment may issue against the lands and tenements, goods and chattels, moneys and effects, and credits of said Catharine, Margaret, and Adelaide Hepp, and that the goods, chattels, effects, and credits of the heirs of the said Fletcher may be attached, or so much thereof as will satisfy petitioners' demand, as the law directs; and that judgment may be rendered for petitioner, for the sum aforesaid, which, with interest from July 13th, 1800, to the present day, on said sum, amounts to $27,574 06, and damages and costs of suit, and that such other relief be granted as the nature of the case may require.

And, moreover, he prays, that Beverly Chew and Richard Relf, be summoned as garnishees, and directed to answer, on oath, the subjoined interrogatories.—Nicholson and Maybin, Attorneys for Petitioner.

Affidavit.

Personally appeared before me, Charles Norwood, Agent of the petitioner above named, who, being duly sworn, doth depose and say: That Catherine, Margaret, and Adelaide Hepp, the defendants above named, reside, permanently, out of the State of Louisiana, to wit, in the Kingdom of Old Spain, and that they are justly indebted to the petitioner above named, in said sum of twenty-seven thousand five hundred and seventy-four dollars and six cents, as in the above petition stated, to the best of his knowledge and belief; and that, deponent believes, said defendants have property within the jurisdiction of this Honorable Court.—C. Norwood. Sworn to and subscribed before me, December 12th, 1817.—A. Mare, Justice of the Peace of the First Section of the City of New Orleans.

Interrogatories to be answered, on oath, by Beverley Chew and Richard Relf, or either of them:

1. Have you or either of you in your possession or under your control any goods, chattels, moneys, effects, and credits of the within named Catherine, Margaret, and Adelaide Hipp, or either of them? If yea, please state how much, of what description, you or either of you thus have in your possession or under your control.

2. Are you, or either of you, in any manner or way indebted to said Catherine, Margaret, and Adelaide Hipp, or either of them? If yea, please state the nature and amount of such your debt.

3. Do you or either of you know of any persons, within the jurisdiction of this Court, any property of any kind belonging to, or who are in any manner indebted to said Catherine, Margaret, and Adelaide Hipp, or either of them? If yea, then state the same fully and unequivocally.

Attachment Bond.

Know all men by these presents, that we, John Fowles, attorney in fact for the heirs of John Turnbull, and A. B. Duncan, of the City of New Orleans, and State of Louisiana, are held and firmly bound unto Catherine, Margaret, and Adelaide Hipp, of the Kingdom of Spain, in the sum of fifty-five thousand two hundred dollars, lawful money of the United States of America, to be paid to the said Catherine, Margaret, and Adelaide Hipp, their executors, administrators, and assigns, for which payment, to be well and truly made, we bind ourselves, and each of us by himself, one and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seal, and dated the 13th day of December, A. D. 1817.

Whereas, John Fowles, attorney in fact for the heirs of John Turnbull, has this day presented a petition to the Honorable the District Court of the First Judicial District, State of Louisiana,

praying an attachment against the property of said Catherine, Margaret, and Adelaide Hipp for the sum of $27,574 06, as the law directs.

Now the condition of the above obligation is such, that if said John Fowles shall well and truly pay or cause to be paid to said Catherine, Margaret, and Adelaide, defendants in said attachment, all such damages as said Catherine, Margaret, and Adelaide shall or may suffer in case it should be decided that said attachment was wrongfully obtained, then the above obligation to remain in full force and virtue.—John Fowles, by A. B. Duncan, [Seal.] A. B. Duncan, [Seal]. Signed, sealed, and delivered, in presence of Joseph A. Maybia.

Attachment.

The State of Louisiana. First Judicial District Court.

To the Sheriff of the Parish of New Orleans. Whereas due proof has been made before the District Court of the State of Louisiana, in and for the First Judicial District thereof, by Charles Norwood, that Catherine, Margaret, and Adelaide Hipp are indebted to John Fowles, attorney in fact of John Turnbull, in the sum of twenty-seven thousand five hundred and seventy-four dollars, six cents, and that said Catherine, Margaret, and Adelaide Hipp reside permanently out of the State of Louisiana,

Now therefore you are commanded to seize and take unto your possession the goods, chattels, lands, tenements, rights, moneys, effects and credits of said Margaret, Catherine, and Adelaide Hipp, in said district, to an amount sufficient to secure the payment of said sum, and that you give notice by leaving a copy of this writ at the last place of abode of said Catherine, Margarite, and Adelaide Hipp, in the district aforesaid, and by causing another copy thereof to be put up at the church door of the district in which they last resided. And in what manner you have executed this writ you make return thereof to our said Court on the first Monday in January next, holden in the City of New Orleans.

Witness, Joshua Lewis, Judge of said Court, this 15th day of December, A. D. 1817, and 42d of the Independence of the United States.—Stephen Pedesclaux, Deputy Clerk.

Return.

Served copy of petition, citation, attachment, and interrogatories, on Richard Relf, one of the Executors of Daniel Clark, December 15th, 1817, at 2 o'clock, P. M., and attached in his hands the goods and chattels, lands and tenements, rights and credits, moneys and effects of the defendants which they might have, to an amount sufficient to satisfy the plaintiff in his demand. Returned December 16th, 1817. J. H. Holland, Deputy Sheriff.

Citation for Garnishee.

The State of Louisiana, First Judicial District Court.

Messrs. Beverly Chew and Richard Relf.

You are hereby summoned to appear at the office of the Sheriff of the Parish of New Orleans, and comply with the prayer of the annexed petition, or file your answer thereto in writing in the office of the Clerk of the First Judicial District Court of the City of New Orleans, in ten days after the service hereof. Witness, Joshua Lewis, Judge of the said Court, the 13th day of December, in the year of our Lord, 1817. Stephen Pedesclaux, Deputy Clerk.

Return.

Served copy of petition, citation, and attachment and interrogatories on Richard Relf, December 15th, 1817, at 2 o'clock, P. M. Returned December 15th, 1817. J. H. Holland, Deputy Sheriff.

Receipt for Document.

Received, New Orleans, 28th February, 1824, of the Clerk of this Court, the account annexed to the within petition, and the documents marked with the letters A, B, C, D, E, and F, filed in this case on the 9th of June, 1818. Received by virtue of an order of Court of this State. J. A. Maybin, of Counsel for the Plaintiff.

Order, &c., December 27th, 1817.

JOHN FOWLES
v.
CATHERINE HIPP and others. } No. 1697.

On motion of Mr. Duncan, of counsel for the plaintiff, upon giving the Court to understand and be informed that the defendants reside out of the State of Louisiana, and hath no counsel to defend their interests in this suit;

It was thereupon ordered by the Court, that J. W. Smith, Esq., be appointed to defend the interest of the defendants in this suit.

Answer, &c.

Filed June 9th, 1818.

The answer of Catherine Hepp, Margaret Hepp, and Adelaide Hepp, heirs of James Fletcher, deceased, to the petition of Fowles, attorney in fact of the heirs of Turnbull, deceased.

These respondents, for answer to said petition, deny all and singular the allegations of plaintiff's petition, and put him upon the proof thereof.

Wherefore, they pray to be hence dismissed with their costs and charges in this behalf most wrongfully sustained.—J. W. Smith, appointed by the Court Attorney for the absent Defendants.

Answer of Garnishee.

Filed 9th June, 1818.

The answer of Richard Relf and one of the executors of Daniel Clark, deceased, for himself and the other executor, as garnishees, to the interrogatories of the petitioners in the case of Fowles, attorney in fact of heirs of Turnbull, against the heirs of Fletcher.

This respondent in answer to the interrogatories of petitioners to garnishees says,—

That they have not in their possession or under their control, nor are they indebted to your petitioners, or the estate or succession of James Fletcher, deceased, otherwise than in a certain sum of about $2000, more or less, balance of the price of a piece of land sold by the widow of said James Fletcher to the said Clark, in his lifetime, and on which balance there is an attachment laid by process out of the Parish Court of New Orleans, in the case of M. White *v.* Catharine Hepp, Margaritte and Adelaide Hepp, executors and heirs of James Fletcher, deceased, for payment of a demand of $702, with interest and costs. An attachment, judgment, and, execution, also exist in the said Court, in favor of a legatee of James Fletcher, deceased, in a suit by her instituted against said Catharine Hepp, executor, &c.—Richard Relf. Sworn to and subscribed before me, this 9th day of June, 1818. Martin Gordon, Clerk.

Judgment.

This cause came on to-day to be tried before the Court.—Duncan, for Plaintiffs; Smith, for Defendants.

Whereupon, after argument and satisfactory proof having been made before the Court, it is ordered that judgment be entered in favor of the plaintiffs against the defendants, for the sum of thirteen thousand five hundred and seventy-one dollars and seventy-five cents, together with interest thereon at the rate of five per cent. per annum, from the 15th day of December, 1817, till paid, and costs of suit.—9th June, 1818.—Joshua Lewis. Martin Gordon, Clerk.

Fi. fa.; issued June 29th, 1818.

The State of Louisiana to the Sheriff of the City and Parish of New Orleans, greeting:

We command you that you demand from Catherine Hepp and others, the sum of thirteen thousand five hundred and seventy-one dollars and seventy-five cents, with interest from 15th December,

1817, till paid, and also the sum of forty dollars thirty-seven and a half cents costs, which John Fowles lately recovered by judgment of the District Court; and if they shall not pay the same in three days after demand, that then you cause the same to be made out of the personal estate of said Catherine Hipp and others, except slaves, in your district, if sufficient personal estate, exclusive of slaves, can be found therein, but if sufficient personal estate, exclusive of slaves, cannot be found in your district, whereof they were owners on 9th June last, in whose hands soever the same may have come, and that you have those moneys before our said Court to render to the said John Fowles, for the judgment aforesaid, on the first Monday of September next, together with this writ. Witness: Joshua Lewis, Judge of said Court, the 29th day of June, A. D. 1818, and in the 42d year of the Independence of the United States. Martin Gordon, Clerk.

Return.

No property found. Returned 7th May, 1819. G. W. Morgan, Sheriff.

Alias fi. fa., issued July 16th, 1818.

The State of Louisiana to the Sheriff of the Parish of New Orleans, greeting. We command you that you demand from Catherine Hepp and others, heirs of J. Fletcher, the sum of thirteen thousand five hundred and seventy-one dollars and seventy-five cents, together with interest thereon, from the 15th day of December, 1817, till paid; and also the sum of forty-four dollars 37½ one hundreds costs, which John Fowles lately recovered by judgment of the District Court aforesaid, and if they shall not pay the same in three days, that then you cause the same to be made out of the personal estate of said Catherine Hepp and others, if sufficient personal estate exclusive of slaves can be found therein; but if sufficient personal estate exclusive of slaves cannot be found in your district, that then you cause the same to be made of the personal estate and slaves of said Catherine Hepp and others in your district; whereof they were owners on 9th June, 1818, in whose hands soever the same may have come, and that you have those moneys before our said Court to render said John Fowles for the judgment aforesaid, on the third Monday of September next, together with this writ. Witness the Honorable Joshua Lewis, Judge of said Court, this 15th day of July, 1818. Martin, Gordon Clerk.

Return.

No property found. Returned 27th December, 1819. G. W. Morgan, Sheriff.

Order, &c. July 14th, 1819.

JOHN FOWLES, Attorney in fact of the heirs of JOHN TURNBULL,
v.
CATHERINE HEPP, MARGARET HEPP, and ADELAIDE HEPP, heirs of JAMES FLETCHER. } No. 1697.

On motion of Mr. Duncan, of Counsel for the plaintiff,

Thereupon ordered by the Court that a *pluries* fi. fa. issue in this case, and when the amount thereof be made that the same be brought and deposited in Court, subject to the further order thereof.

Pluries fi. fa., issued July 15th, 1819.

(Lost or mislaid.)

Order, &c., July 15th, 1819.

JOHN FOWLES, Attorney in fact of the heirs of JOHN TURNBULL,
v.
CATHERINE HEPP, MARGARET HEPP, and ADELAIDE HEPP, heirs of JAMES FLETCHER. } No. 1697.

On motion of M. Duvillier, Esq., of counsel for J. Navarre, thereupon ordered by the Court, that the plaintiff herein show cause, on Saturday next, the 17th inst., why the moneys now in the hands of the sheriff, should not be paid over to the said Navarre in preference to the plaintiff herein.

Order, &c. February 28th, 1824.

JOHN FOWLES
v.
CATHERINE HEPP, AND OTHERS. } No. 1697.

On motion of J. A. Maybin, Esq., of counsel for the plaintiff, it is ordered by the Court, that they have leave to take from the record of this case, the account annexed to the petition, together with the documents marked with the letters A, B, C, D, E, and F, filed on the 9th June, 1818, and take his receipt for the same.

Alias Pl. fi. fa.; issued March 15th, 1834.

First Judicial District Court. The State of Louisiana.

To the Sheriff of the Parish of East Baton Rouge, greeting: We command you that you demand from Margaritt Hepp, Catherine

Hepp, and Adelaide Hepp, heirs of James Fletcher, the sum of thirteen thousand five hundred and seventy-one dollars and seventy-five cents, with legal interest from 15th December, 1817, till paid, and also the sum of fifty dollars costs, which John Fowles, attorney in fact of the heirs of Turnbull, lately recovered by judgment of the District Court, and if they shall not pay the same after legal demand, that then you cause the same to be made out of the personal estate of said Catherine Hepp and others, as aforesaid, except slaves, in your district, if sufficient personal estate exclusive of slaves can be found therein, but if sufficient personal estate of said defendants, exclusive of slaves, cannot be found in your district, that then you cause the same to be made of the personal estate and slaves of said defendants, in your district, whereof they were owners on the 9th June, 1818, in whose hands soever the same may have come, and that you have those moneys before our said Court to render the said John Fowles, attorney, &c., for the judgment aforesaid on the 2d Monday of May next, together with this writ. Witness the Hon. C. Watts, Judge of said Court, the 15th day of March, 1834.—Jno. L. Lewis, clerk.

Return.

Received 26th April, 1834.—John Buhler, Sheriff.

The property of the defendants in this parish not being satisfactorily ascertained, and this writ expiring, the same is now returned for an al. pl. writ to make seizure and sale according to law.—Baton Rouge, 9th May, 1834. John Buhler, Sheriff.

Pluries fi. fa., issued 13th September, 1834.

First Judicial District Court.

The State of Louisiana, to the sheriff of the Parish of East Baton Rouge, greeting: We command you, in the name of the State of Louisiana, and of the First District Court, that you demand from Catherine Hepp, Margarett Hepp, and Adelaide Hepp, heirs of James Fletcher, the sum of thirteen thousand five hundred and seventy-one dollars and seventy-five cents, with interest thereon from the 15th day of December, 1817, till paid, and also the sum of fifty-one dollars and sixty-two cents costs, which John Fowles, attorney in fact for heirs of Turnbull, recovered by judgment of the District Court, and if they shall not pay the same after legal demand, that then you cause the same to be made out of the personal estate of said defendants, except slaves, in your district, if sufficient personal estate exclusive of slaves can be found therein, but if sufficient personal estate of said defendants, exclusive of slaves, cannot be found in your district, that you then cause the said sum to be made of the personal estate and slaves of said defendants, whereof they were owners on the 9th June, 1818, in whose hands soever the same may

have come, and that you have these moneys before our said Court to render the said John Fowles, attorney, &c., for the judgment aforesaid, on the first Monday of November next, together with this writ. Witness the Hon. C. Watts, Judge of the said Court, this 13th day of September, 1834.—W. Farrie, Deputy Clerk.

Return.

Received 20th September, 1834.—John Buhler, Sheriff.

In this case, by order of Jh. Lobdell, Esq., attorney for plaintiff, I have levied on a judgment in the case of A. Fletcher et al. *v.* A. Cavalier et al., No. 1446 of record in the Third District Court, Parish of East Baton Rouge, State of Louisiana, in favor of said Fletcher, in recovery of certain lands; and as an appeal to the Supreme Court is now pending, I am directed by said Lobdell to suspend further proceedings in this case until a decision shall be had in said suit, and this writ to be returned for a plu. writ when required. This 3d November, 1834.—John Buhler, Sheriff East Baton Rouge.

Al. pluries fi. fa., issued December 4th, 1835.

First Judicial District Court.

The State of Louisiana, to the Sheriff of the Parish of East Baton Rouge, greeting: We command you that you demand from Catherine Hipp, Margaret Hipp, and Adelaide Hipp, heirs of James Fletcher, the sum of thirteen thousand five hundred and seventy-one dollars and seventy-five cents, with interest from 15th December, 1817, till paid; and also the sum of fifty-three dollars and 25 cents costs, which John Fowles, attorney in fact of the heirs of John Turnbull, lately recovered by judgment of said District Court; and if they shall not pay the same after legal demand, that then you cause the same to be made out of the personal estate of said Catherine Hipp and others, except slaves, in your district, if sufficient personal estate exclusive of slaves can be found therein, but if sufficient personal estate of said defendant, exclusive of slaves, cannot be found in your district, that then you cause said sum to be made out of the personal estate and slaves of said defendants whereof they were owners on the 9th June, 1818, in whose hands soever the same may have come, and that you have those moneys before our said Court to render said Jno. Fowles, attorney, &c., for the judgment aforesaid, on the first Monday of February next, together with this writ. Witness the Hon. C. Watts, Judge of said Court, this 4th day of December, A. D. 1835. Jno. L. Lewis, Clerk.

Return.

Received 11th December, 1835.—John Buhler, Sheriff. The judgment of Fletcher *v.* A. Cavalier and others, No. 1446, District Court East Baton Rouge, in favor of plaintiffs for the land, but in favor of

the defendants for their improvements, having been levied on in a former writ, and the uncertainty of any surplus being realized until a sale and proceedings be had in the case of Fletcher *v.* Cavalier et al. This writ expiring, is returned for the purpose of getting a pluries fi. fa. to complete the same, this 27th January, 1836.—John Buhler, Sheriff.

Pluries fi. fa., issued 27th February, 1837.

First Judicial District Court of the State of Louisiana to the Sheriff of the Parish of Iberville, greeting: We command you that you demand from Catherine Hipp, Margaret Hipp, and Adelaide Hipp, heirs of James Fletcher, the sum of thirteen thousand five hundred and seventy-one dollars and seventy-five cents, with interest from 15th December, 1817, till paid; and also the sum of fifty-four dollars eighty-seven and a half cents costs, which John Fowles, attorney in fact of heirs of John Turnbull, lately recovered by judgment of the District Court; and if they shall not pay the same after legal demand, that then you cause the same to be made out of the personal estate of said Catherine Hipp et al. as aforesaid, if sufficient personal estate, exclusive of slaves, can be found therein, but if sufficient personal estate of said defendants, exclusive of slaves, cannot be found in your district, that then you cause the same to be made out of the real estate and slaves of said defendants whereof they were owners on the 9th day of June, 1818, in whose hands soever the same may have come; and that you have those moneys before our said Court to render the said John Fowles, attorney in fact, &c., for the judgment aforesaid, on the third Monday of April next, together with this writ. Witness the Hon. C. Watts, Judge of said Court, this 27th day of February, in the year of our Lord one thousand eight hundred and thirty-seven, and in the sixty-first year of the Independence of the United States.—Jno. L. Lewis, Clerk.

Return.

Received 3d April, 1837. Returned, no property of the heirs of James Fletcher found in the Parish of Iberville. Parish of Iberville, 17th April, 1837.—E. A. Sherburne, Sheriff.

State of Louisiana. Fifth District Court of New Orleans.

I hereby certify, that the foregoing twenty pages do contain (with the exception of the documents A, B, C, D, E, F, withdrawn by plaintiff's attorney, and the fi. fa. issued 15th July, 1819) a full and complete transcript of the record of the case, wherein John Fowles, attorney in fact, &c. &c., is the plaintiff, and Catherine Hepp, Margaret Hepp, and Adelaide Hepp, heirs of James Fletcher, are defendants, instituted in the District Court for the first district of Louisiana (the record of which have by law been transferred to this

court), and now on the records thereof under the No. 1697. Clerk's Office, New Orleans, May 27th, 1853.—Jno. J. Baron, Deputy Clerk. [SEAL.]

Minutes, April Term, A. D. 1854.

NEW ORLEANS, 19th June, 1854.

Present, Hon. J. A. Campbell, Presiding Judge.

FLETCHER'S HEIRS
v.
URSIN JOLLI.

This cause was taken up for trial, and was opened by F. Perin, Esq., for complainants, and by Miles Taylor for defendant, and proceeded in until three o'clock, P.M., whereupon it was continued until to-morrow.

Minutes.

NEW ORLEANS, 20th June, 1854.

Present, Hon. J. A. Campbell, Presiding Judge.

FLETCHER'S HEIRS
v.
URSIN JOLLI.

This cause was resumed, and Miles Taylor, Esq., of counsel for defendant, closed his argument, whereupon it was ordered that this cause be continued until to-morrow.

Minutes.

NEW ORLEANS, 21st June, 1854.

Present, Hon. J. A. Campbell, Presiding Judge.

FLETCHER'S HEIRS
v.
URSIN JOLLI.

The argument of this cause was concluded by Mr. Smiley for complainants, whereupon it was submitted to the Court, and taken under advisement.

COMPLAINANTS' EVIDENCE, No. 1.

Offered on trial 19th June, 1854.

Testament of James Fletcher.

In the name of God: amen. Being perfectly in my senses and in good health, and going to undertake a voyage to Spain to endeavor to recover my property which is deposited, &c., at Vera Cruz, and

from many unforeseen accidents which mankind lay under, from sickness, sea risk, &c., I therefore take the precaution to make these, my last will and testament, they being my true instruction and desire. First, recommending my soul to the mercy of my Creator, which I hope, through the merits of my Saviour, *Jesus Christ*, will be saved, and hereafter enjoyed, hereafter eternal happiness.

I bequeath and leave unto Katherine Hipp, whom I live with, and *b* two children, whom I firmly believe I am their father—Margaret and Adelaide—all my landed property, which is specified at Pedesclaux's office, as also a plantation at the Natchez, which Charles Norwood has got the title; and as the said Catharine Hipp is now big with child for me, the said child is to inherit equally in the said landed property the whole family—family share and share alike. And as I have other expectations from what property I bring along with me, and that at *Vera Cruz*, out of which my debts is to be first paid, and the remainder to be equally divided among my children and their mother, as above mentioned.

I also bequeath unto Catharine Hipp all my household furniture, &c. &c., for her own proper use.

I also le by colored son, Peter Fletcher, whom I had with Jumand Navarre, a mulatress. I give unto him two thousand dollars, to be paid him when at the age of twenty-one, which sum is to be deducted from the whole of my property, except my household furniture, which I have bequeathed to Catharine Hipp for her own proper use.

It's also my last will and volontee that the said Catharine Hipp shall be sole executrix—provisor she never marries, or live together with any man whatsoever—being not my will that any person should control my children; if she acts contrary to this, my will, I then leave and request that Francisco Roman Canes and Domingo Flites, of New Orleans, take on themselves to be my executors and administrators, in seeing done and performed these my last will and testament.

I have made a sale of my land to Francisco Roman Canes, for nine thousand dollars, as may be seen by the copy of the sale here inclosed, which sale ought to have no effect. But if he should persist in it, the amount is to be put to interest on good security, for the mother and children, until they arrive at the age of sixteen, which period I hope be able to conduct themselves, and then to be divided equally amongst them, as also what other property I may then have.

Given under my hand this 13th day of March, 1802. Signed: James Fletcher.

I do hereby certify the above to be a true and literal copy of the original, deposited in the office of the late Peter Pedesclaux, then a notary public in this city, on the *sexenteenth* of September, in the year one thousand eight hundred and four, and that the first line of the paragraph concerning Peter Fletcher, the colored son of the

testator, worn out in the original will so as to read of it no more than the two words, "I also," and part of a few other letters, as in the hereabove copy carefully reported. In testimony whereof I have set my hand and affixed the seal of my office. In the city of New Orleans, the first of October, in the year one thousand eight hundred and twenty-four, and the forty-ninth year of the Independence of the United States of America.—Phi. Pedesclaux, Not. Pub. [Seal.]

COMPLAINANTS' EVIDENCE, No. 2.

Filed 16th March, 1846.

Deed from Geonard to J. Fletcher.

8th October, 1799.

Written in Spanish.

Venta Ihipote'a.

Chancelada la obligac'n e hipoteca ante my confecha de esta dia. N'a Orleans, 24 de Nov'er de 1801, doi fee Pedesclaux E'no concuender con el original.

LOUIS T. CAIRE.

Sepose, que yo Dn. Gilberto Lionar Tesorero de Exto. con funciones de contador por Tuta. de Rl. Hacienda de esta Prova. de la Louisiana apoderado Gra'l de Dn. Jose Vasquez Vohamonde Capn. de Exr. lo retirado y residente en el Puesto de Baton Rouge, y en virtud de su carta misiva de fecha catorce de Agosto de este ano, Otorgo que vendo realmte. a Dn. Santiago Fletcher vecino y del comercio de esta ciudad, a saver, una habitation de seis arpanes y ouce toesas de tierra de frente, con quarenta de profondidad, situada en el distrito de Ibervil y sobre la margen Isquierda de esta Rio Mississippi comfinando por arriva con tierras de Estevan Cornon, y por abajo, con las de Pablo Chiason la que hubo de Firmin Blanchard y de Magdalena Bracot marido y nurger lexitimos, por eserd. ante el comandte. de dho Puesto su fecha diez de marzo de mil setecientos noventa y dos; cuyo titulo entrego al comprodor: asi mismo le vendo dos arpanes y medio de frente y quarenta de profundidad de cipres y chene, y no la tierra en que se halleur colocados, por no pertenecer le, que le vendio dho Blanchard en el espresado dia mes y ano de Noventa y dos, con las toesas de Madera que se hallen contadas, cuia cipriera linda por arriba con tierras de la Parroquia del citado distrito, y qualmente le vendo, dos diablos, dos carretas, un par de Buyes, una yegua y suevia de este ano una partida de estacas nuevas que se hallan de lante de dha Haritacion, Tambien le vendo de tres a tres y medio arpanes de tierra de frente, con quarenta de profundidad situadas en la punta, por abajo de la habi-

tacion de Dn. Francisco Rivas en el citado districto, que le han sido dadas por haver hecho el malecon y camino, y todo lo vendo con los edificios que contienen, en el estado en que se hallan, con to das sus entradas y salidas, usas, costumbres, drosa. y servidumbres, por libres de grabamen como lo certifica el presente esno. anotador, en precio de mil pesas del como Mexicano, que me devera satisfacer en el termino de quatro anos, de esta fecha, pagaderos a doscientos y cinco pesos de la misma especie en cada uno de ellos, mediante lo qual a parto a mi Poderdante del dro de propiedad, posesion util senorio, y dernas aecines reales y personales que a dha haritacion Ciprieras, tierras, y edificios habia y tenia, que cedo y transfiero en el comprador, y en quien su dro y causa hubiere para que todo como suio propio lo posea o enagena a su voluntad por esta esro. que le otorgo en senal de real entrega, con lo que se visto haver adquerido la posecion, sin otra prueva de que le relevo, y obligo a mi poderdante a la eviccion, seguridad y saneamto. de esta Vta. en toda forma de dro. con sus Vienes havidos y por haver, doy por inserta la clausula quarantijia y renuncia las leyes fueros dros y privilegios de su favor con la gral en forma, y estando presente yo el nominado Dn. Santiago Fletcher, acepto esta esera. y recivo comprada havitacion y dernas que comprende, esta venta en la cantidad y conformidad que me van vendidos, de todo me doy por entregado y otergo formal recivo:—Y me obligo entoda formes de dro. a satisfacer y pagar al Bahamondo, o aquien su dro y causa hubiere a los plasos senalados los mil pesos que resulto duedor llanamte. y sin pleyto con las costas de la lobranza y por que se me podra ejecutar con esta eseta. y el simple juramento de parte lexitima, en que lo difiero; y para su seguridad sin que la generl. obligacion, Derogue la especial, in por el contrario, sino que de ambos efectos ha de poder urarse contra lo demas de mis Cienes, hipoteco especial y senaladamte. la havitacion y todo lo demas, que comprende esta venta, que prometo no vender in en manera alguna enagenar pendiente esta obligacion lo contrario no valga, sea nulo, no pase dro a tercero in otlo posedor que perjudique esta obligacion: En cuio testimonio esfecha en esta Ciudad de la Nlle. Orleans a ocho de Octubre de mil setecientos noventa y nueve. Yo el Eseno. doy fee conosco a los otorgantes que firmaron siendo testigos Dna. Celestino Lavergne, Dn. Ferndo. Perey y Dn. Jacinto de Ayala presentes.

TESTADOR DE BENA, No. Vo. FLETCHER.
GILBERTO LEONARD, Anteme.
PEDRO PEDERSCLEAUX,
Exno. Puba.

Coneuerda con su original que queda en la escrivania de mi Cargo a que me remito.

Nueva Orleans a cinco de Enero de mil ochocientos cuarante y seis. Dos Palabras borradas no vallen.

[SEAL.] LOUIS T. CAIRE,
Not. Pub.

Certificate of Probate.

Court of Probates, Register of Wills' Office.

I certify that the annexed last will and testament is recorded in this office, in Will Book No. 1, pages 15 and 16. Witness my hand and the seal of the Court of Probates, at New Orleans, this 17th March, 1846. Ano. D. Doreocourt, Register. [SEAL.] Filed November 6th, 1805.

Filed 16th March, A. D. 1846.

Deed from G. Leonard to James Fletcher.

(Translation.)

Hypothecation and sale.

Cancelled, the obligation and mortgage executed before me this day, New Orleans, 24th November, 1801. Pedesclaux, Notary. True copy.

LOUIS T. CAIRE.

Know ye, that I, Dr. Gilberto Leonard, Treasurer of the army, with the functions of comptroller per interim of Real Hacienda, of this Province of Louisiana, holding full and general power of attorney from Dn. Jose Vasquez Vohamonde, Captain of the army in retreat, and residing in the post of Baton Rouge, and by virtue of his letter dated fourteenth of August of the present year, declare that I sell really to Don Santiago Fletcher, inhabitant of and trader in this city, to wit: a plantation, six arpents and eleven toises front by forty arpents in depth, situated in the district of Iberville and on the left bank of the River Mississippi, bounded on superior side by the lands of Estevan Carnon, and on the inferior side by those of Pablo Chiason, which he had from Firmin Blanchard and Magdalina Brarot, legitimate husband and wife, by written act, passed before the commandant of said post, dated tenth of March, seventeen hundred and ninety-two, which title I deliver to the purchaser. And also I sell to the same, two arpents and a half front by forty deep of cypress and oak, without the land whereupon the said timber stands, which were sold by said Blanchard, on the day, month, and year aforesaid, ninety-two, with such timber as may be cut, which cypress land is bounded on one side by the lands of the Parish in said district. And I also sell to the same two timber carts, two carts, a pair of oxen, and a parcel of fencing rails which lay in front of said plantation. And I also sell to the same from three to three and a

half arpents front by forty in depth, of lands situated at the point below the plantation of Don Francisco Rivas in said district, which were given to him for having made the levee and road; and I sell the whole with the buildings thereon, in such state as they may be found, with the inlets and outlets, uses and customs, rights and servitudes, free of any mortgages, as now certifies the present Notary Recorder of the same, for the price of one thousand dollars of Mexican coin, which must be paid at the end of four years from the date of this present; payable two hundred and five dollars of the same coin each year. And in consideration of the above, I do part, in the name of my principal, with the right of property, possession, dominion, utile, and all such actions, real or personal, as against such plantation, cypress land, buildings, &c., he had or might have, which I cede and transfer unto the purchaser, for him to have and hold the same, or dispose of it at his will by virtue of this act, which I grant in sign of real transfer, and the purchaser is considered as having acquired the possession of the above without further proof, with which I dispense him, and I oblige my principal to the eviction, security, and perfection of this sale, in all form of law, together with his properties present or future. I give as inserted, the clause of guaranty, and renounce all laws, decisions, rights, and privileges in his favor, together with the general rule of law which prohibits that. And being present, I, the above named Don Santiago Fletcher, I accept the present act and take as purchased, the said plantation, and all such lands mentioned in the sale, with the quantity for which they are sold, and acknowledge possession thereof, giving formal receipt. And I bind myself in all form of law to satisfy and pay the said Vahamonde, or any one in his right, at the terms specified, the one thousand dollars on demand, and without being sued, with the costs of recovery, so that execution may result from this act and the simple oath of the legitimate party to which I accede, and for security and without that the general obligation derogates to the principal nor the contrary, but in such manner that both may have effect against my property, I mortgage specially and particularly, the plantation and other properties embraced in this act of sale, and promise not to sell or alien the same in any manner as long as this obligation be in force, the contrary to be null and to pass no right to any third person, to the prejudice of this obligation. In testimony whereof, this act passed in this City of New Orleans, October the eighth, seventeen hundred and ninety-nine, I, the Notary, giving faith to the parties, whom I know, and who have signed in presence of the following witnesses: Don Celestin Lavergne, Don Ferdinando Percy, and Don Yacinto de Ayala.

TESTADRE DE BENA, No. Vo. | FLETCHER.
GELBERTO LEONARD.

Before me,

PEDRO PEDESCLAUX,
Notary Public.

True copy from the original extant on my current Notarial Register. New Orleans, fifth of January, eighteen hundred and forty-six. (Signed) LOUIS T. CAIRE.

COMPLAINANTS' EVIDENCE, No. 3.

Filed 16th day of March, 1846.

Nicholas Verbois' Deed to James Fletcher, in Spanish.

Dated 11th May, 1798.

Vta. hipca. Chancelada la obligacion e hipoteca por ante my con fha de este dia. N. Orleans, 18 de Junio de 1801, anos doy fee Pedesclaux No. concuenda con su original.

LOUIS T. CAIRE,
Not. Pub.

Sepan quantos esta carta vieren como yo Dn. Nicholas de Verbois teniente de exto, y Capitan de Milicias otrogo que vendo realmente, y con efecto a Dn. Santiago Fletcher de este vecindario, y Comercio una habitacion una propria cituada en el distrito de Iberville como a treinta y dos leguas de esta cuidad rio arriba, y de este lado, y como a treinta arpanes mas abajo que la Iglesia san Gabriel compuesta de siete arpanes, y veinte y cinco toesas de frente sobre la profundidad ordinaria de quarenta arpanes sobre las lineas paralelas, lindando por el lado de arriba con la habitacion de Pablo Chiasson y por el de abajo a la de Victor Blanchard sobre cuya tierra se halla una casa principal de cinquenta y cinco pies de largo y treinta y quatro de ancho, un Almacen de quarenta pies de largo sobre quarenta y uno de ancho, un tinglado sin sex cubierto para la Bateria del anil, y bombas; tres pares de cubo, y sus movimientos para batir, y Bomba varias Cabanas para negros, cercas &a. cuya habitacion me patenece por haver comprado seis arpanes y dies toesas de Dn. Anselmo Blanchard por escritura otorgada por ante Dn. Luis Tudice comandante de la fourche en el ano de mil setes ochenta y uno, y el arpan y medio restante de Dn. Victor Blanchard en noventa y dos, o noventa y tres por ante Dn. Franco. Rivas comandante del Puesto de Manchack, y se la vendo al ante dicho con todas sus entradas, y salidas usos costumbres dros, y servidumbres libre de gravamen e hipotecas como lo certifico el presente Esno. anotador del ellas en precio de dos mil pesos fuertes del como Mexicano y no en otra forma, pagaderos de estra manera, quatro cientos pesos que he recivido como dinero efectivo, en madera de Caoba, y los mil y seis cientos

pesos restantes en una obligacion de plazo cumplido otorgada en favor del comprador por Dn. Josef Piernas, y Dn. Adelayda Seconte su esposa de la candidad de dos mil pesos, cuya obligacion fue pasada por ante Dn. Carlos Ximenes con fha doce de Mayo del ano pasado de mil setess. noventa y seis, y luego que haya hecho el cobro de ella le entregare al comprador los quatro cientos pesos restantes de los mil, y seis cientos, y en caso que en el espacio de tres anos a contar de esta fha no pudiese consequir este pago, me havra de pagari los mil y seis cientos pas. este plazo lluamente, y sin pleyto Alguno, Mediante loqual me aparto, y separo del dro de propriedad pocesion, util dominio, y senoris que a dha Habitacion havia, y tenia, y todo lo cedo renuncio y traspaso en el comprador y en quien su causa, y dro huviere para que como suyo proprio la pocea venda, cambie, o Enagene a su voluntad en virtud de esta escritura que a su favor otorgo en senal de real entrega con lo que ha de servisto haver adquirido su pocession su que necesite de otra prueva de que lo relevo, y me obligo a la evicion seguridad, y saneamento de esta venta en toda forma de dro con mis bienes havidos, y por haver doy aqui por incerta la clausula guarentigio, y renuncio las leyes de mi favor con la gral que lo prohive. Y estando presente al otorgamiento de esta escritura yo el referido Don Santiago Fletcher la accepto a mi favor reciviendo comprado dha habitacion en la cantidad y conformidad que me va vendido de ella me doy por entregado a mi volundad, y otorgo formal recivo, y cedo y traspaso alenunciado Dn. Nicolas Verbois, la obligacion referido de Dn. Josef Piernas, y su esposa Da. Adelayda Seconte, y en caso que al cabo de los tres anos referidos *referidos* no satisfaciesen estos dha obligacion me obligo a pagar al vendedor los mil y seis cientos pesos que quedo a dever le por el final pago de la habitacion. Al complimiento de loqual obligo mi persona y bienes haridas, y por haver, y Espeosalmte. y sin que la gral. obligacion derogue a la especial hipoteco con la qualidad de non alienando dha habitacion la qual prometo no vender in en manera alguna enagenar hasta el real y efectivo pago de los enunciados mil y seis cientos pesos. En cuyo testimonio es fecha la carta en la ciudad de la Nueva Orleans a once de Mayo de mil Setess. Noventa y ocho anos; y los otorgantes a quienes yo el Esno. doy fee conosco asi lo otorgaron y finnaron Siendo testigos Dn. Santiago Semaire Dn. Ferndo. Percy, y Dn. Celestino Lavergne vecinos y presentes.

Not. Que despues de haver esta escritura espreso el vendedor que se obligara a entregar al comprador los titulos de propriedad de la habitacion dentro de un mes a contar de esta ftra utsupra, tgos los mismos.

SANTIAGO FLETCHER,
NICOLAS DE VERBOIS,
Ex'no Pub'co.

Concuerda con su original que queda en la escrivania de mi cargo

a que me remito. Nueva Orleans a cinco de Enero de mil ocho cientas cuaranta yseis. Una palabra Canada novale.

[SEAL.] LOUIS T. CAIRE,
Notary Public.

Translation from Spanish of Complainants' Evidence, No. 3.

Filed 16th March, 1846.

Hypothecary sale cancelled the obligation and mortgage entered into before me this day, 18th June, 1801.

In faith whereof,

PEDESCLAUX,
Notary.

A true copy.

(Signed) L. T. CAIRE,
Notary Public.

Deed, May 11th, 1798.

Know all men by these presents, that I, Don Nicolas de Verbois, belonging to the army and captain of militia, do sell really and with full effect to Don Santiago Fletcher, of this neighborhood and trade, a plantation belonging to me and situated in the District of Iberville, at about thirty leagues above this city and on the same side of the river, and about thirty arpents below St. Gabriel's Church, comprising seven arpents and twenty-five toises front, by the usual depth of forty arpents on parallel lines, bounded on one side by the plantation of Paul Chiasson, and below by that of Victor Blanchard, on which plantation there stands a house, fifty-five feet long by thirty-four wide; a barn, forty feet long by forty-one wide; a shed, without its roof, for the preparation of indigo, with pumps, three pair of cisterns, and materials for building; with a pump, several cabins for negroes, fences, &c.; which plantation belongs to me, for having purchased six arpents and ten toises from Don Anselmo Blanchard, by written act, passed before Don Louis Yudice, Commandant of Lafourche, in the year one thousand seven hundred and eighty-one, and the remaining arpent and a half from Don Victor Blanchard, in ninety-two or ninety-three, before Don Fran'co Rivas, Commandant of the Manchac Post; and I do sell it to the above-named with all its inlets and outlets, uses, customs, and servitudes, free from all encumbrance or mortgage, as now certifies the present Notary Recorder of the same, for the price of two thousand dollars, of Mexican coin and none other, payable as follows: four hundred dollars, which I have received as cash in Caoba wood, and the sixteen hundred dollars balance in an obligation at term, given in favor of the buyer by Don Josef Piernas and Dona Adelaida Leconte, his wife, to the amount of two thousand dollars, which obligation was entered into before Don Carlos Ximenes, and passed on the twelfth of May, of last year,

1796, and as soon as I shall have received the amount of the same, I will return to the purchaser the four hundred dollars surplus above the sixteen hundred; and if it should happen, that within three years from the date of this act said payment could not be effected, he will have to pay me the sixteen hundred dollars without further delay, and without being sued for the same.

And in consideration whereof, I do part with and renounce the right of property, possession, dominion, utile and seigneurial rights, which I had to and over said plantation, and I do cede, renounce, and transfer it to the said purchaser, or any one in his right, so that he may dispose of the same as his own, possess, sell, or transfer the same at his will, by virtue of this act, which I pass in his favor, as a sign of real transfer, which will suffice to establish his right of possession without any other proof, with which I dispense him, and I oblige myself to the eviction, security, and perfection of this sale, in all form of law, and pledge my property, and to that effect insert herein the clause of guarantee, and renounce all laws in my favor, together with the general rule which prohibits it. And being present when this act is passed, I, Don Santiago Fletcher, do accept it in my favor, receiving as purchased the said plantation, measuring the quantity which is sold to me, and I take it as sold according to my own will, and give formal receipt therefor. And I do further cede and transfer unto the aforenamed Don Nicolas de Verbois the above-described obligation of Don Josef Piernas and his wife, Dna. Adelaida Leconte; and in case that at the expiration of the three years mentioned, said obligation should not be complied with, I bind myself to pay to the seller the sixteen hundred dollars, which I remain indebted to him for the final payment of said plantation. For the performance whereof, I bind my person and property to be had, and specially and without that this special obligation should derogate to the special mortgage with the clause de non-alienation of said plantation, which I promise not to sell or alien in any manner, until the real and effective payment of the said sixteen hundred dollars. In testimony whereof, this act is passed in the City of New Orleans, on the eleventh day of May, one thousand seven hundred and ninety-eight. And the parties thereto, which I, the notary, acknowledge as having passed the same: Witnesses, Don Santiago Lemaire, Don Ferdinando Perey, and Don Celestin Lavergne, neighbors present.

Nota.—After this act was passed, the seller declared that he bound himself to give the buyer the titles of property to said plantation within a month from the date of these presents, passed, *ut supra*, in presence of the same witnesses. Santiago Fletcher, Nicolas de Verbois.

Before me, Pedro Pedesclaux, Notary Public. A true copy from the original on file in my office, for recourse. New Orleans, 5th January, 1846, and signed T. Caire, Notary Public.

COMPLAINANTS' EVIDENCE, NO. 4.

Deed from Don Santiago Fletcher to Don Frco. Ramon Canes, 1st December, 1801. *Written in Spanish.*

Sepase que yo Dn. Santiago Fletcher de esta vecindad, otorgo que vendo realmte. a Don Francisco Ramon Canes de esta vecindad dos havitaciones, una situados en el distrito de Iberville, de este lado, como a trienta arpanes mas abajo de la Iglesia Sn. Gabriel compuesta de siete arpanes y veinte y cinco toesas de frente y la profundidad ordinaria de quarenta arpanes, sobre las lineas paralelas, lindando por arriva con la havitacion de Pablo Chauvin, y por abajo con la de vinda Blanchard; con la casa principal, y demas fabricas que contiene; y la otra situado en el mismo distrito, del otro lado del Rio, de seis arpanes y once toesas de tierra de frente, con quarenta de fundo, lindando por arriva con tierras de Estevan Comon, y por abajo con las de Pablo Chason; y una tierra situada en la antigua villa de Manchac, compuesta de ocho arpanes de frente y ochenta y mas de fundo, lindando de un lado a dha villa, y del otro a Madama Hanfon, que to de me pertenece por aber comprado por esevas. en este archivo la primera Havitacion de Dn. Nicolas de Verbois en once de Mayo de mil setecientos noventa y ocho, la segunda de Dn. Jose Basquez Bahamonde, en ocho de Octubre de mil setecientos noventa y nueve; y la tierra de los herederos de la succession de Da. Magdalena Cartin vinda Beauregard en veinte y seis de Jeniro del ano anterior; con todas sus entradas y salidas, usos, costumbres, dios y servidumbres, libres de todo grabamen, como lo certifica el presente esno. Anotador, en precio de Nueve mil pesos fuertes del cuno Mexicano, que me los devera satisfacer y pagar en el termino de los anos, a contar de esta fecha; en condicion, de que en el proprio dia en que se comple el plazo, senalado ha de verificar el pago, y pour integros en una sola partida los precitados nueve mil pesos en mi casa y poder, en la propria especie de moneda citada; y pasado dicho termino, sin verificarlo, queda por la mismo hecho, como desde ahora doy por nula esta venta, como si no se hubiera celebrado este contracto, y con lo que ha de ser visto, huverseme transferido el dominio de dhas dos havitaciones, y tienas relacionadas, sin poderme compeler, in obligarme a indemnizacion alguna: Mediante lo qual, en los terminos expuestos, me aparto de la propriedad, posecion, util, dominio, senovio, y demas acciones reales y personales que a ahas havitaciones, y tierra shavia y tenia, que cedo y transfiero en el comprador y enquiren su derecho y causa hubiera, para que como propios los posea, o enagene a su voluntad, por esta erera. que le otorgo en senal de real entrega, en lo que es visito haver adquerido la posecion, sin otra prueva de que lo relevo; y me obligo a la eviccion y saneamto. de esta venta en toda forma de dio, I estando presente yo el nominado Dn. Francisco Ramon Canes, accepto esta esra. y recivo compradas las dos havitaciones y terras, en la cantidad y

conformidad ql. me van vendidas, de todo me doy por entregado y otorgo formal recivo; y me obligo a satisfacer y pagar al plazo senalado los Nueva mil pesos frentes del cuno Mexicano que resulto dendor, llanamte. y sin pleyto alguno, y para seguridad del pago, sin que la Gral obligacion derogue la especial, ni por el contrario, hipoteca con calidad de non alienando las dos habitaciones, y tierras que me van vendidas, que promete no vender, ni enagenar hasta el real y efectivo pago: al complimiento de lo qual me obligo en toda forma de dro, en cino testim. es fecha en esta cuidad de la en N. Orleans a primero de Diciembre de mil ochocientos y un anos yo el eseno. doy fee conosco a las otorgantes, que firmaron siendo testigos, Don Celestin Avergne, Don Ferndo. Percy, y Don Facinto de Ayala vecinos y presentes.

S. FLETCHER.
FRANCISCO RAMON CANES.

Ante mi.

PEDRO PEDESCLAUX,
Esno. Pubco.

A true copy of the original act in the office of Pierre Pedesclaux, late a Notary Public of this city, and one of my predecessors. N. Orleans, 13th June, 1854.

[SEAL.] H. PAUL CAIRE,
Not. Pub.

Translation from Spanish of Complainants' Evidence, No. 4.

Deed from James Fletcher to Francisco Ramon Canes.

1st December, 1801.

Be it known that I, James Fletcher, of this neighborhood, actually grant and sell to Mr. Francisco Ramon Canes, this neighborhood, two plantations; one situated in the district of Iberville, on this bank, at about thirty arpents below the Church of St. Gabriel; containing seven arpents and twenty-five toises front, with the ordinary depth of forty arpents, between parallel lines; bounded above by lands of Paul Chaisson, and below by those of widow Blanchard, with the principal house, and all the buildings and appurtenances thereunto belonging. And the other is situated in the same district on the other side of the river, containing six arpents and eleven toises of land in front, with forty in depth, bounded on the upper side by lands of Stephen Comon, and below by those of Paul Chiasson. And one piece of land situated at the ancient town of Manchac, containing eight arpents front, by eighty in depth or more; bounded on the one side by the village, and upon the other by Madam Hanfon; all of which belong to me by purchase as per acts passed in this office. The first plantation from Mr. Nicholas de Verbois, on the eleventh of May, 1798; the second from Mr. Joseph Bosquez Blanchard, on the

eighth of October, 1799; and the piece of land from the heirs of the succession of Madam Magdalen Cantin, widow Beauregard, on the twenty-sixth of June last, with all rights of ways, uses, customs, and servitudes, free from all encumbrance, as the present notary does certify; for the price of nine thousand heavy dollars, of the Mexican coin; which he will have to satisfy and pay to me, at the end of two years, counting from this date, on condition, that on the very day on which the said two years expire he will make the said payment good, and place the entire amount in one single payment, the above-mentioned nine thousand dollars, in my house and power, in the same coin above-mentioned. And should the said time expire without the payment, then from that day, this sale shall be considered null, as if the present act had not been passed. And according to the above conditions, he will have to transfer to me the ownership of the two plantations and the said piece of land, without his right to compel me to any indemnification; by reason of the aforesaid terms and conditions. I divest myself of the ownership, possession, use, dominion and seigniority; and furthermore all rights of actions, personal and real, which I have and hold to the said plantations and land; I cede and transfer unto the purchaser, so that he will possess the same as his own, or convey the same as he wishes; by virtue of this act which I grant unto him, by which he appears to have acquired the possession thereof without it being necessary to produce any other proof, from which I exempt him; and I bind myself to give possession and complete this sale in due form of law. And I, the said Francisco Ramon Canes, accept the above-described plantations and lands, in the quantity and form in which they have been sold to me, and I acknowledge that all of the same have been delivered to me. And I bind myself to satisfy and pay at the time stated aforesaid, the nine thousand heavy dollars of the Mexican coin, for which I remain simply debtor, and without any suit, and to guarantee the payment without the general obligation resulting from all sales, lessening this special obligation; on the contrary, I mortgage the said two plantations and the piece of land in favor of the said vendor, with the clause of *de non alienando*, and I promise not to sell or alienate the same until the payment as aforesaid shall be fully made; to the performance of which I hereby bind myself in due form of law.

In testimony whereof, this act is passed in this City of New Orleans, on the first day of December, eighteen hundred and one. I, the undersigned notary, declare that I know the contracting parties. Thus done in presence of the witnesses.

CESTINO LAVERGNE,
FERNANDO PERCY,
YACINTO DE AYALA,
Neighbors, and here present.

S. FLETCHER,
FRANCO. RAMON CANES.

Ante mi.

PEDRO PEDESCLAUX,
Esno. Pubco.

Cane's Certificate, in English.

COMPLAINANTS' EVIDENCE, No. 5.

Written in Spanish.

Retrocession, &c., of F. R. Canes to Fletcher's Heirs, May 14th, 1806.

Filed 16th March, 1846.

En la Cuidad de la Nueva Orleans a Catorze de Mayo de mil ochocientos seis y el trigesimo de la Independencia Americana. Ante mi el Notario, y testigos parecio Dn. Francisco Ramon Canes, de este vecindario y comercio a quien doy fe conosco, y dijo que por escritura en este Archivo fha primero de Diciembre del ano de mil ocho cientos uno, compro a Dn. Santiago Fletcher dos habitaciones en el distrito de Iberville, una situada en esta parte del Prio compuesta de siete arpanes y veinte y cinco toesas de frente, y quaranta de profundidad contodas sus fabricas, lindando de un lado a tierra de Pablo Charrion, y del otro lado del Rio, compuesta de sies arpanes y once toesas de frente y quarenta de profundidad, lindando de un lado a tierras de estevan como y del otro a Pablo Cherion, y una tierra situada en la antigua Villa de Manchac compuesta de ocho arpanes de frente, y ochenta y mas de profundidad, lindando de un lado a dicha Villa, y del otro a tierras de Madama Hanson; todo por la suma de nueva mil pesos, que debia haber satisfecho en el termino de dos anos a contar de la fecha de dha escritura, y para la segundad del pago hipotico las dhas habitaciones con la condicion que si complido que fuese el expresado termino no satisfaciere la indicada suma de nueva mil pesos deberia entenderse nula la precitada escritura, y como no ha verificado el pago otorga por la presente que anula en todas sus partes la mencionada escritura, y cede y transpasa dichas tierras a los herederos del citado Don Santiago Fletcher, para que en su virtud la posean o enagenen a su volundad por esta escritura que les otorga en senal de real entrega con lo que en visto habea adquerido la possecion sin otra prueva de que los releva al cumplimiento de todo lo qual se obliga en toda forma de dro y estando presente Dna. Catalina Hipp, alvacia y executora testamentaria del memorado difunto Don Santiago Fletcher, deepta esta escritura y recive las expresadas tierras en lo terminos explicados, de ellas se da por entregada y otorga recivo en forma, asi lo otorgaron y firmaron con los testigos que lo fueron Don Joaq'n Lozano y Don Joan Bta. Ramirez, vecinos y presentes.

(Signed) Franco. Ramon Canes, Catherin Hipp, T. Fletcher, Joaquin Lozano, Jn. Bte. Ramirez ; Pierre Pedesclaux, Nre.

I certify the foregoing to be a true copy of the original act, extant on my current notarial register. In faith whereof I grant these presents, under my signature and the impress of my seal of office. New Orleans, 3d January, 1846.

A las de Victor Banchard, y la otra situada al otra. This reference approved.

[SEAL.] LOUIS T. CAIRE,
Not. Pub.

Filed 16th March, A. D. 1846.

Retrocession from Canes to Fletcher's Heirs, May 14th, 1806.

(Translation from Spanish.)

In the City of New Orleans, the fourteenth of May, 1806, and the thirtieth of the Independence of the United States, before me, the notary, and witnesses, was present Don Francisco Ramon Canes, of this neighborhood and trade, to whom I give faith, who acknowledged and said, that by an act passed in this office, the first of December, eighteen hundred and one, he purchased from Don Santiago Fletcher two plantations in the District of Iberville, one situated on this side of the river, measuring seven arpents and twenty-five toises front, and forty arpents in depth, with all the improvements thereon, bounded on one side by the lands of Pablo Chiasson, and on the other by those of Victor Blanchard; the other plantation on the other side of the river measuring six arpents and eleven toises front, and forty arpents in depth, bounded on one side by the lands Estevan Como, and on the other side by those of Pablo Chenon, and a piece of land, situated in the ancient Town of Mantua, measuring eight arpents front, and eighty or more in depth, bounded on one side by the said town and on the other by the lands of Madame Hanson, the whole for the sum of nine thousand dollars, which were to have been paid at the end of two years from the date of the act referred to, and for security of said payment he had mortgaged the said plantations *with the condition*, that if at the expiration of the delay aforesaid the said sum of nine thousand dollars was not fully paid, the above-mentioned act was to be *null and void*, and as said payment has not been effected, he now, by these presents, declares that he annuls in all its parts the act above referred to, and he cedes and transfers the said lands to the heirs of said Santiago Fletcher, so that in virtue thereof they may possess and alien the same at their own will, according to this act which he grants, in sign of real transfer, and they acquire possession thereof,

without any other proof, with which he dispenses them; for the execution of these presents he binds himself in all form of law, and being present Donna Catarina Hipp, widow and testamentary executrix of the late Santiago Fletcher, she accepts this act, and receives the said lands on the conditions above expressed, and takes them in her possession, and gives formal receipt thereof. Thus done and signed in presence of witnesses, to wit: Don Joaquin Loyano and Don Y. Bta. Ramirez, neighbors present. (Signed) Fco. Ramon Canes; Catherine Hipp Fletcher; Joaquin Lozano; Jean Baptiste Ramirez.—Pierre Pedesclaux, Notary Public.

I certify the foregoing to be a true copy of the original act extant on my current notarial register. In faith whereof, I grant these presents under my signature and the impress of my seal of office. New Orleans, 3d January, 1846. Louis T. Caire, Not. Pub. [SEAL.]

COMPLAINANTS', No. 6.

Certificate of Death of Fletcher.

See ante, page 88, "Admissions."

COMPLAINANTS' EVIDENCE, No. 7.

Record from 2d Judicial District Court (Plaquemine).

Filed 16th day of March, A. D. 1846.

State Court.

To the Honorable Louis Esnault, District Judge of the Fourth Judicial District of the State of Louisiana, holding and sitting for and in the Parish of Iberville.

The petition of Adelayda Fletcher, duly authorized and assisted by her legitimate husband, Juan Cuesta, Felicitas and Maria Antonia Fletcher, minors, above the age of puberty, duly assisted by the said Juan Cuesta, their curator adlites, all residing en la neuva Vera Cruz, in South America, and here all duly represented by their attorney in fact, Etienne Caraby, of the City of New Orleans, within this State, respectfully showeth.

That your three aforesaid petitioners are the children and sole heirs of the late Santiago Fletcher, formerly of the City of New Orleans, a merchant, and now deceased, in the City of Madrid, in the year 1801, as your petitioners are ready to prove.

That, at the time of his death, the said Santiago Fletcher was the owner of several properties, among which, especially, was one plantation, situate in the Parish of Iberville, measuring seven arpents and twenty-five toises, on the left bank of the Mississippi River, by forty in depth, with all the buildings thereon, bounded on one side

by the property of Paul Chiasson, and on the other by the one of Blanchard, and bought by your petitioners' father from Mr. Verbois, on the 11th day of May, 1778, before Pierre Pedesclaux, Notary Public, in New Orleans.

Your petitioners further show, that ever since the year 1806, the said property has been unlawfully disposed of, to the great prejudice and damages of your petitioners.

That one Mr. Constant Viel, residing in the aforesaid Parish of Iberville, became possessed, and still now possesses, four arpents of the aforesaid property, without any legal title whatever, and enjoyed the rents and profits thereof, to the great prejudice and damage of your petitioners, in the sum of four hundred dollars a year; and that he neglected and refused, and still now neglects and refuses, to restore the same to your petitioners, and to pay them the said rents and profits, though requested so to do.

Wherefore, your petitioners respectfully pray your honor to order that all necessary process may issue in this case, and that the said Constant Viel be duly served with a copy of this petition as the law directs, and be cited to answer this petition, and be condemned to restore unto your petitioners the aforesaid property, with all the rents and profits accrued thereto from the year 1806, at the rate of four hundred dollars a year, till the said property be delivered over to your petitioners, with the interest on said rents and profits, according to law and the costs of suit.

And your petitioners further pray for all other and further relief which the nature of the case may require and equity meet with. And in duty bound, &c. &c.—(Signed) Cuvillier, Attorney for Plaintiffs. Filed the 31st March, 1824.—(Signed) L. Petit, Clerk.

Citation annexed.

The State of Louisiana.

To Mr. Constant Viel.

You are hereby summoned to appear at the office of the Sheriff of the Parish of Iberville, and comply with the prayer of the annexed petition, or file your answer thereto in writing, in the office of the Clerk of the Fourth District Court, holden within and for said parish, in ten days after the service hereof.

Witness the Honorable Louis Esnault, Judge of said Court, the 31st day of March, in the year of our Lord one thousand eight hundred and twenty-four.—(Signed) L. Petit, Clerk. [SEAL.]

(Indorsed.)

Received 1st April, 1824. Served this citation by delivering a copy thereof, together with a copy of petition, to Constant Viel, the defendant, in person, this 1st April, 1824.—(Signed) John H. Willis,

Deputy Sheriff, Parish of Iberville. Returned and filed the 6th April, 1824.—(Signed) L. Petit, Clerk.

Answer of Constant Viel.

To the Honorable the Judge holding Court in the Fourth District, State of Louisiana, Parish of Iberville.

The answer of Constant Viel to the petition exhibited against him before this Honorable Court by Adelaide Fletcher and others, says that he has purchased the tract of land claimed by said petitioners from Joseph Le Blanc, called Adoune, of the Parish of Iberville. That this respondent has a good and lawful title to the same, and denies the right of said Adelaide and al. to said land. That should it appear that said Le Blanc had not a good and legitimate title to said land, this respondent bought with guaranty according to law. Your respondent further says, that said Joseph Le Blanc Adoune died some time since, leaving legitimate heirs who are bound by law to warrant the title to the above land, as it will appear by the annexed bill of sale, duly recorded at the office of the Parish Judge of the Parish of Iberville.

Therefore your petitioner prays that he may be allowed to call in warranty the above-mentioned heirs, to wit: Simeon Le Blanc, son of late Joseph Le Blanc, Thomas Hebert, and his wife Adelaide Le Blanc, widow Elie Hebert alias Marguerite Le Blanc, widow Senateur Babin alias Elise Le Blanc, Marcel Dupry and his wife Josephine Le Blanc, and Edward Le Blanc, all living in the Parish of Iberville; that copy of this petition and the whole proceedings in this case be served on each of them; that they be cited to appear before this Court in due course of law, to defend the title made by their ancestor to your respondent, and that in case that judgment be rendered against this respondent, that by the same decree he may be exonerated of all costs and charges, and that said warrantors be considered as the only parties in this suit.—Signed, Hiriat, for respondent.

Order.

Let the within-named warrantors be served with a copy of the proceedings of this case, and be cited to appear as prayed for in this petition. This 1st October, 1827.—Signed, L. Esnault, Judge Fourth District. Filed 3d October, 1827.—Signed, J. A. Haase, Clerk.

Answer of Joseph Le Blanc's Heirs.

FLETCHER AND OTHERS
v.
VIEL AND LE BLANC'S HEIRS, called in warranty.

The heirs of Le Blanc, called in warranty in the above cause, come into Court by the undersigned, their counsel, and says that the plain-

tiffs in this case ought not to have or maintain suit, because they say said plaintiffs are not the legal heirs and representatives of the deceased Fletcher, as is falsely alleged in their petition in this case filed. If further answer is deemed necessary, then they deny all and singular the allegations in said petition contained. They affirm that their ancestor was the rightful owner and proprietor of the land sold. Wherefore they pray to be hence dismissed, with costs.—Signed, Thomas C. Nicholls, attorney for Le Blanc's heirs.

Filed 21st April, 1828.—Signed, J. A. Haase, Clerk.

Minutes: 28th April, 1834.

ADELAIDE FLETCHER and al.
v.
CONSTANT VIEL and al. } No. 443.

The defendants in this cause come into Court and suggest the death of Cydalise Arceneaux, wife of Joseph Menier, leaving one minor child, Joseph Menier, fils, represented by his natural tutor, the said Joseph Menier, his father. They further suggest the marriage of Telude Arceneaux, one of the warrantors, with Simon Landry, fils, who should be cited and made party to this suit.

Minutes: 24th April, 1833.

ADELAIDE FLETCHER & al.
v.
CONSTANT VIEL. } No. 443.

On motion of Heriat and Nichols, of counsel for defendant, and on suggesting the death of Gregorin Babin and Abraham Arceneaux, defendants in this case, it is ordered that the heirs of said Babin and Arceneaux be made parties to this suit.

It is further ordered, that defendants be permitted to amend their answers by calling in their warrantors, and by adding a claim for the value of improvements, and that cause be continued.

Answer to Sup'l Petition.

Fourth District Court, State of Louisiana, Parish of Iberville.

ADELAIDE FLETCHER, wife of
JUAN CUESTA, & al.,
v.
CONSTANT VIEL.

Constant Viel, in answer to the supplemental petition of Adelaide Fletcher and al., filed before this Honorable Court, on the 5th day of September inst., saith that he denies the right of said Adelaide

Fletcher to bring a suit before this Court, because she never was duly authorized so to do by her husband, and inasmuch as an answer may be necessary, this respondent saith that he is not bound or liable in any manner whatsoever to said plaintiff; and as this respondent has, in his original answer, called the heirs of the late Simon Le Blanc (Jaon), to defend his title to the land he, this defendant, bought from their ancestors, as alleged in said original answer, he therefore prays, that the aforesaid supplemental petition to said heirs, and as some changes have taken place in the situation and qualifications of several of said heirs, the defendant prays that the same supplemental petition may be served on Jean Estevan and Euphemie Arceneaux, his wife; to J. Menier, tutor of Leonard Calise Menier, his minor child, issued from his marriage with Cidalise Arceneaux; to Teleide Arceneaux, widow of late Firmin Landry, junior; to Surville Hebert, Treville Hebert and Heloise Hebert, three children, issued of the marriage of Thomas Hebert with Adelaide Le Blanc; to Thomas Hebert, tutor of his minor children, Jules Hebert. All of the above-named persons living in the Parish of Iberville.

This respondent further prays, that said supplemental petition be served on Hyppolite Arceneaux and Domitite Arceneaux, his wife, living in the Parish of St. James, Comte of Acadid, in this State; also, to have the same served on Joseph Babin and his wife, Marcelline Babin, Sylvester Babin, for himself, and as tutor of his minor brothers, Balthazard Babin and Edward Babin, Maximilien Bealsimer, issued from Elizabeth Babin, Thelonise Babin, Marine Babin, Napoleon Babin, and Marguerite Babin. All the last named-persons living in the Parish of East Baton Rouge, and your petitioner prays that the above-mentioned supplemental petition be served according to law, and to be thence dismissed with his costs and for general relief, &c. (Signed) Hiriat, for Respondent. Filed 24th September, 1834. (Signed) J. A. Haase, Clerk. Filed 24th March, 1835, de novo, by order of Court. (Signed) J. A. Haase, Clerk.

Judgment.

Fourth District Court, Parish of Iberville.

ADELAIDE FLETCHER, wife of JUAN CUESTA, et al.,
v.
CONSTANT VIEL. } No. 443.

September Term, A. D. 1835.

This cause having been duly set for trial, and the plaintiffs having failed to appear, either in person or by attorney, to plead their cause on the day fixed for trial, and the counsel for the defendant having required that judgment of nonsuit be rendered against the plaintiffs, it is therefore ordered, adjudged, and decreed by the Court, that judgment of nonsuit be rendered against the plaintiffs, and that

they be condemned to pay the costs of suit to be taxed.—(Signed) in open Court, this 8th day of October, A. D. 1835.—(Signed) R. N. Ogden, Judge of 4th District, 8th of October, 1835.

Copies of Documents in case of Fletcher et al. v. *Simon Allain.*

To the Honorable Lewis Esnault, District Judge of the Fourth Judicial District of the State of Louisiana, holding and sitting for, and in the Parish of Iberville.

The petition of Adelada Fletcher, duly authorized of, and assisted by her legitimate husband, Juan Cuesta; Felicitas and Maria Antonia Fletcher, minors, above the age of puberty, duly assisted by the said Juan Cuesta, their curator *ad lites*, all residing en la neuva Vera Cruz, in South America, and here all duly represented by their attorney-in-fact, Etienne Caraby, of the City of New Orleans, within this State; respectfully showeth,

That your three aforesaid petitioners are the children and sole heirs of the late Santiago Fletcher, formerly of the City of New Orleans, a merchant, now deceased, in the City of Madrid, in the year 1801, as your petitioner is ready to prove.

That at the time of his death the said Santiago Fletcher, his father, was the owner of several property, among which especially, was a plantation situated in the Parish of Iberville, fronting the River Mississippi, and measuring six arpents eleven toises by forty in depth, bounded on one side by the property of Etienne Couson, and on the other by that of Paul Cherron, and bought your petitioner's father from Mr. J. B. Bahamond, on the 8th of October, 1799, before Pierre Pedesclaux, Notary Public.

That ever since the year 1806, the said property has been unlawfully disposed of, to the great prejudice and damage of your petitioners.

That one Mr. Simon Allain, residing in the aforesaid Parish of Iberville, is now in possession of three arpents five and one half toises front by forty in depth of the said property, without any legal title whatever, and enjoys the rents and profits thereof, to the great damage of your petitioners, in the sum of three hundred and twenty dollars a year, from the year 1806 to this day, which said Simon Allain refused and still now refuses to pay, and also refuses to restore the land aforesaid, though requested so to do.

Wherefore your petitioners respectfully pray your honor to order, that all necessary process may issue in this case, and that the said Simon Allain may be duly served with a copy of this petition, and be cited to answer thereto, and be condemned to restore unto your petitioners the aforesaid property, with all the rents and profits accrued thereon from the year 1806, till the said property be delivered over to your petitioners, at the rate of three hundred and twenty dollars a year, with interest on the said rents due, and costs of suit.

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And your petitioners further pray for all and every other relief, which the nature of the case may require, and equity meet with. And your petitioners as in duty bound will ever pray, &c. &c.—(Signed) Cuvillier, Attorney for petitioners. Filed the 31st March, 1824. (Signed) L. Petit, Clerk.

Citation.

The State of Louisiana, to Mr. Simon Allain.

You are hereby summoned to appear at the office of the Sheriff of the Parish of Iberville, and comply with the prayer of the annexed petition, or file your answer thereto in writing in the office of the Clerk of the 4th District Court, holden within and for said Parish, in ten days after the service hereof. Witness the Honorable Ls. Esnault, Judge of said Court, the 31st day of March, in the year of our Lord one thousand eight hundred and twenty-four. (Signed) L. Petit, Clerk. [SEAL.]

(Indorsed.)

Received, 1st April, 1824. Served this Citation by delivering a copy thereof, together with a copy of petition, to Simon Allain, the defendant, in person, this 2d April, 1824. (Signed) John H. Willis, Deputy Sheriff, Parish of Iberville.

Returned and filed the 6th April, 1824. (Signed) L. Petit, Clerk.

Answer of S. Allain.

To the Hon. the Judge of the Fourth District Court, Parish of Iberville, State of Louisiana.

Simon Allain, reserving to himself the benefit of all exceptions to the many irregularities of the petition of Adelaide Fletcher, Felicitas and Maria Antonia Fletcher, representing themselves as the sole heirs of Santiago Fletcher, for answer to said petition, respectfully saith, that he denies all and singular the facts and allegations in said petition contained, and requires strict proof thereof, for he saith that he came into possession of the land he now occupies, to wit: three arpents five and a half toises front, by forty in depth on the Mississippi River, in the Parish of Iberville, in the 1819, by virtue of a good, just, and legal title, and has held and specially enjoyed the same ever since. Wherefore he and not the petitioners are entitled to the possession and property of the same; that he purchased the same of one Victor Chiasson, late of the said Parish of Iberville, deceased, by deed recorded in the Parish Judge's office of said Parish, for the sum of three thousand six hundred dollars, with warranty of title by law. That your respondent since his said purchase has made useful

and valuable improvements on the said premises, to wit: thirty acres of post and rail fence, worth two hundred dollars. *Deadening* fifteen acres of land preparatory to clearing the same, worth eighteen dollars.

Respondent further shows that the heirs of the said Victor Chiasson having inherited from their said ancestor a considerable estate, are bound in law to warrant and defend respondent's said title to the land claimed, and indemnify respondent from all costs and damages.

Respondent would further represent, that if petitioners ever had any cause of action, as set forth in their petition (but which is expressly denied), that the same is now barred by prescription, and cannot be maintained in law.

Wherefore your respondent prays that the said heirs of the said Victor Chiasson, to wit: Henriette Frozelle Chiasson, by her curator adlites, Elie Le Blane, Victorian Chiasson, by his tutor, Marcel Duprey, Margaret Chiasson and Irena Chiasson, by their natural tutrix, Margaret Le Blane, and Margaret Le Blane, widow of the said Victor Chiasson, be cited to appear to defend respondent's title and possession to said land; and that in case of the eviction of this respondent, that the said heirs and widow cited in warranty having accepted the succession of the said Victor, be decreed to pay to your respondent the restitution of said price, to wit: three thousand six hundred dollars, the value of said improvements, to wit: two hundred and eighteen dollars, all fruits and revenues, your respondent may be obliged to return to said petitioner all costs of suit and expenses in resisting the claims of petitioners, and all damages in consequence thereof, to wit: one thousand dollars. That he be hence dismissed with his costs of suit, this cause be tried by a jury, and that all other relief be granted to him that his cause may require according to law and equity. (Signed) Felix Brunot, Jr., Attorney for Respondent.

Filed 12th October, 1824. (Signed) L. Petit, Clerk.

Minutes, 20th October, 1828.

On motion of P. A. Cuvillier, attorney for petitioners, it is ordered by the Court, that a commission do issue in this case directed to the presiding Judge, or any of the associate Judges of the City Court of New Orleans, to take the deposition of Marin Agote, Esq., and any other witnesses that may be produced by either of the parties in this case. Continued by consent until the decision of the Supreme Court in the case of said plaintiff *v.* Constant Viel.

Minutes, 24th April, 1833.

ADELAIDE FLETCHER et al.
v.
SIMON ALLAIN. } No. 442.

On motion of Hiriat and Nichols, of counsel for defendant, and on suggesting the death of Gregorie Babin and Abraham Arceneaux,

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defendants in this case, it is ordered, that the heirs of said Babin and Arceneaux be made parties to this suit. It is further ordered, that defendants be permitted to amend their answers by calling in their warrantors, and by adding a claim for the value of improvements; and that cause be continued.

Answer of S. Allain.

4th District Court, State of Louisiana, Parish of Iberville.

Simon Allain, in answer to the petition exhibited against him before this Honorable Court by Adelaide Fletcher et al., saith, that he has purchased the tract of land he now owns from the late Joseph Le Blane, alias Adon. That this defendant has a good title to that property, and denies the right or claim set up by said Fletcher et al.; and should it appear that the plaintiffs have some claims to the lands so purchased by this respondent, he says that he bought it with the guarantees of law. And your respondent further says, that said Joseph Le Blane, alias Adon, has departed this life and left legitimate heirs whom are bound by law to warrant the title to the aforesaid land, as it will appear on trial by the bill of sale; wherefore your respondent prays, that he may be allowed to call in warranty the said heirs, to wit: Simon Le Blane, Gedeon Duprey, and others, that copy of his petition may be served on them that they may be cited to appear and answer for their ancestor's acts, and that in case judgment should be rendered against this respondent in favor of Adelaide Fletcher et al., by the same decree it may be ordered that said heirs should restore and pay to this respondent the value of said land with damages, to wit: five thousand dollars for the land and improvements, and one thousand dollars damages with costs of suit. (Signed) Hiriat, for respondents. Filed 21st April, 1829. (Signed) J. A. Haase, Clerk.

Answer of Le Blane's Heirs.

ADELAIDE FLETCHER
v.
SIMON ALLAIN and other
HEIRS OF LE BLANE,
In Warranty.

The heirs of Joseph Le Blane, called in warranty, come into Court by the undersigned their counsel, and say, that the plaintiffs ought not to have or maintain suit, because they say that the said plaintiffs are not the heirs and representatives of the late James Fletcher, as is by them falsely alleged in their petition. Should further answer be deemed necessary, then these respondents say, that Simon Allain has a good and legal title to the land sued for. Wherefore

they pray that they be hence dismissed with costs. (Signed) Thos. C. Nichols, attorney for heirs of Le Blane.

Filed 22d April, 1829. Signed—J. A. Haase, Clerk.

Judgment.

ADELAYDA FLETCHER, Wife of Juan Cuesta, et al.,
v.
SIMON ALLAIN. } No. 442.

Fourth District Court, Parish of Iberville, 8th October, 1835.

This cause having been duly set for trial, and the plaintiffs having failed to appear either in person or by attorney to plead their cause, and the counsel for the defendant having required that judgment of non-suit be rendered against the plaintiffs, it is therefore ordered, adjudged, and decreed by the Court, that judgment of non-suit be rendered against the plaintiffs, and that they be condemned to pay the costs of suit to be taxed. Signed in open Court this 13th day of October, A. D. 1835.—(Signed) R. N. Ogden, Judge, 4th Dist.

Copies of Documents in case of Fletcher v. Thosin. Blanchard.

To the Honorable Louis Esnault, District Judge for the Fourth Judicial District for the State of Louisiana, holding and setting for and in the Parish of Iberville.

The petition of Adelayda Fletcher, duly authorized of and assisted by her legitimate husband, Juan Cuesta, Felicitas, and Maria Antonia Fletcher, minors, above the age of puberty, duly assisted by the said Juan Cuesta, their curator, ad lites, all residing en la neuva Vera Cruz, in South America, and here all duly represented by their attorney in fact, Etienne Caraby, of the City of New Orleans, within this State.

Respectfully showeth, that your aforesaid petitioners are the children and sole heirs of the late Santiago Fletcher, formerly of the City of New Orleans, a merchant, and now deceased in the City of Madrid, in the year 1801, as your petitioners are ready to prove.

That at the time of his death, the said Santiago Fletcher was the owner of several property, among, especially, was one plantation, situate in the Parish of Iberville, measuring seven arpents and twenty-five toises on the left bank of the Mississippi River, by forty in depth, with all the buildings thereon, bounded on one side by the property of Paul Chiason, and on the other by the one of Mr. Blanchard, bought by your petitioner's father from Mr. Verbois, on the 11th of May, 1778, before Pierre Pedesclaux, Notary Public, in New Orleans.

That ever since the year 1806, the said property has been unlawfully disposed, to the great prejudice and damage of your petitioners.

That one Mr. Thomassin Blanchard, residing in the aforesaid Parish of Iberville, became possessed and still now is in possession of two arpents front by forty in depth of the aforesaid property, without any legal title whatever, and enjoyed the rents and profits thereof, to the great prejudice and damage of your petitioners, and that he neglected and refused, and still now neglects and refuses, to restore the same to your petitioners, though requested so to do.

Wherefore, your petitioners respectfully pray your Honor to order that all necessary process may issue in this case, and the said Thomassin Blanchard be duly served with a copy of this petition, as the law directs, and be cited to answer this petition, and be condemned to restore unto your said petitioners, the aforesaid property, with all the rents and profits accrued thereto, from the year 1806 to the day the said plantation shall be restored to your petitioners, at the rate of two hundred dollars a year, with costs of suit. And your petitioners further pray for all other and further relief which the nature of the case may require and equity meet with. And, as in duty bound, they will ever pray, &c. &c. (Signed) Cuvillier, Attorney for petitioners. Filed the 31st March, 1824. (Signed) L. Petit, Clerk.

Citation.

The State of Louisiana.

To Mr. Thomassin Blanchard.

You are hereby summoned to appear at the office of the Sheriff of the Parish of Iberville, and comply with the prayer of the annexed petition, or file your answer thereto in writing, in the office of the Clerk of the Fourth District Court, holden within and for said parish, in two days after the service hereof. Witness, the Honorable Louis Esnault, Judge of said Court, the 31st day of March, in the year of our Lord one thousand eight hnndred and twenty-four. (Signed) L. Petit, Clerk. [SEAL.]

Indorsed.

Received 1st April, 1844. Served this citation, by leaving a copy thereof, together with a copy of petition, to a free white person, above the age of fourteen years, at the domicil of Thomassin Blanchard, the defendant, the 1st April, 1824. (Signed) John H. Willis, Deputy Sheriff, Parish of Iberville. Received and filed 6th April, 1824. (Signed) L. Petit, Clerk.

Minutes, 20th October, 1828.

A. FLETCHER et al.
v.
THOMASSIN BLANCHARD. } No. 444.

On motion of P. A. Cuvillier, Attorney for Petitioners, it is ordered that a commission do issue in this case, directed to the pre-

siding Judge or any of the associate Judges of the City Court of New Orleans, to take the deposition of Marin Agote, Esq., and any other witnesses that may be produced by either of the parties in this case, continued by consent, until the decision of the Supreme Court in the case of said plaintiffs *v.* Constant Veil.

Answer of Thomassin Blanchard.

Fourth District Court, State of Louisiana, Parish of Iberville.

Thomassin Blanchard, in answer to the petition against him, exhibited before this Court, by Adelaide Fletcher et al., saith that he has purchased the land on which he lives, and the sale he now owns, from Joseph Le Blane *alias* Adon, as it will appear by the bill of sale exhibited on the trial. This respondent says he thinks that he has a good title to that land, and denies the right or claim of said A. Fletcher et al.; but, should it appear that the plaintiffs *have same to the* or claim to the same, this respondent says he bought with guarantee, and that his vendor's heirs or assigns are bound for it.

Your respondent further says, that said Joseph Le Blane *alias* Adon, departed this life, and left legal and legitimate representatives, whom are bound in law to warrant the title made by their ancestor. Wherefore, your respondent prays, that Simon Le Blane, Gedion Duprey, Thomas Hebert and his wife, Adelaide Le Blane, Marcel Duprey, Gregorin Babin, and others, be called in warranty, and be cited to appear before this Court, in due course of law; and that, in case judgment should be rendered against this respondent for the land aforesaid, that, by the same decree, he be sentenced and decreed, that the above-mentioned heirs, Simon Le Blane, and should pay to your respondent the sum of four thousand dollars, for the value of the land, and one thousand dollars damages and costs of suit. (Signed) Hiriat, for Respondent.

Filed 21st April, 1829. (Signed) J. A. Haase, Clerk.

Answer of the Heirs.

ADELAYDA FLETCHER
v.
THOMASSIN BLANCHARD and heirs of JOS. LE BLANC, called in warranty.

The heirs of Joseph Le Blanc called in warranty came into Court by the undersigned their counsel, and say, that plaintiffs ought not to have or maintain suit, because they say that said plaintiffs are not the heirs and representatives of James Fletcher, deceased, as is by them falsely alleged; should further answer be deemed necessary, then respondents deny all and singular the allegations in said peti-

tion contained, and say that Thomassin Blanchard is the true and rightful owner of the land sued for.

Wherefore they pray to be hence dismissed with costs. (Signed) Thos. C. Nicholls, attorney for Le Blane's heirs.

Filed 22d April, 1829. (Signed) J. A. Haase, Clerk.

Minutes, 24th April, 1833.

ADELAYDA FLETCHER et als.,
v.
THOMASSIN BLANCHARD. } No. 444.

On motion of Hiriat and Nicholls, of defendants, and on suggesting the death of Gregorin Babin and Abraham Arceneaux, defendants in this case, it is ordered that the heirs of said Babin and Arceneaux be made parties to this suit. It is further ordered that defendants be permitted to amend their answers by calling in their warrantors, and by adding a claim for the value of improvements, and that cause be continued.

Judgment.

ADELAIDE FLETCHER, wife of JUAN CUESTA, et als.,
v.
THOMASSIN BLANCHARD. } No. 444.

Fourth District Court, Parish of Iberville, September 29th, 1835.

This cause having been duly set for trial, and the plaintiffs having failed to appear, either in person or by attorney to plead their cause, on the day fixed for trial, and the counsel for the defendant having required that judgment of non-suit be rendered against the plaintiffs, it is therefore ordered, adjudged, and decreed by the Court, that judgment of non-suit be rendered against the plaintiffs, and that they be condemned to pay the costs of suit to be taxed. Signed in open Court, this 6th day of October, A.D. 1835. (Signed) R. N. Ogden, Judge 4th Dist.

Copies of Documents in suit of Adelayda Fletcher v. *Julia Sharp, No.* 445.

To the Honorable Louis Esnault, District Judge for the Fourth Judicial District of the State of Louisiana, holding and setting for and in the Parish of Iberville.

The petition of Adelayda Fletcher, duly authorized of and assisted by her legitimate husband Juan Cuesta, Felicitas and Maria Antonia Fletcher, minors, above the age of puberty, duly assisted by the said Juan Cuesta, their curator adlites, all residing in la neuva Vera Cruz

in South America, and here all duly represented by their attorney in fact, Etienne Caraby, of the City of New Orleans within this State, respectfully showeth.

That you three aforesaid petitioners are the children and sole heirs of the late Santiago Fletcher, formerly of the City of New Orleans, a merchant, now deceased in the City of Madrid, in the year 1801, as your petitioner is ready to prove.

That at the time of his death, the said Santiago Fletcher, their father, was the owner of several property, among which especially was a plantation, situate in the Parish of Iberville, fronting the River Mississippi, and measuring six arpents eleven toises, by forty in depth, bounded on one side by the property of Etienne Couson, and on the other by that of Paul Chanon, and bought by your petitioner's father from Mr. J. B. Beliamonde, on the 8th of October, 1799. Before Pierre Pedesclaux, Notary Public.

That ever since the year 1806 the said property has been unlawfully disposed of, to the great prejudice and damage of your petitioners.

That one Madame Julia Sharp, the widow of Etienne Chiasson, residing in the aforesaid Parish of Iberville, is now in possession of three arpents five and one half toises of the aforesaid land, fronting the river, by forty in depth, bounded on one side by Allen Allis, and on the other by part of said property now unlawfully possessed by one Mr. Simon Allain, of the said Parish, without any legal title whatever, and she enjoys the rents and profits thereof to the great prejudice of your petitioners, in the sum of three hundred and twenty dollars a year, from the year 1806 to this day, which widow Etienne Chiason refused and still now refuses to pay, and also refuses to restore the land aforesaid, though requested so to do.

Wherefore your petitioners respectfully pray your Honor to order that all necessary process may issue in this case, and that the said Julia Sharp, widow of Etienne Chiason, may be duly served with a copy of this petition, and be cited to answer thereto, and be condemned to restore unto your petitioners the aforesaid property, with all the rents and profits accrued thereon, from the year 1806 till the said property be delivered over to your petitioners, at the rate of three hundred and twenty dollars a year, with interest on the said rents due, and costs of suit.

And your petitioners further pray for all and every other relief which the nature of the case may require and equity meet with. And your petitioners, as in duty bound, will ever pray, &c. &c. (Signed) Cuvillier, attorney for petitioners. Filed the 31st March, 1824. (Signed) L. Petit, Clerk.

Citation.

State of Louisiana.

To Madame Julia Sharp, widow of Etienne Chiasson: You are hereby summoned to appear at the office of the Sheriff of the Parish of

Iberville, and comply with the prayer of the annexed petition, or file your answer thereto in writing, in the office of the Clerk of the Fourth District Court, holden within and for said Parish, in ten days after the service hereof. Witness the Hon. Louis Esnault, Judge of said Court, the 31st day of March, in the year of our Lord one thousand eight hundred and twenty-four. (Signed) L. Petit, Clerk. [SEAL.]

(Indorsed.)

Recd. 1st April, 1824. Served this citation by delivering a copy thereof, together with a copy of petition, to Julia Sharp, widow of Etienne Chiasson, the defendant, in person, this 1st April, 1824. (Signed) John H. Willis, Deputy Sheriff, Parish of Iberville. Returned and filed the 6th April, 1824. (Signed) L. Petit, Clerk.

Answer of Julia Sharp.

To the Hon. the Judge of the Fourth District Court, Parish of Iberville, Louisiana.

Julia Sharp Chiasson, widow of Etienne Chiasson, late of said Parish, deceased, reserving the benefit of all exceptions to the irregularities and uncertainties of the petition of Adelayda Fletcher, Felicites and Maria Antonia Fletcher, representing themselves as the sole heirs of Santiago Fletcher, for answer to said petition respectfully saith, that she denies all and singular the facts and allegations in said petition contained and requires strict proof thereof. She also saith that said cause of action, if it ever did exist (but which is expressly denied), is now barred by prescription. Respondent further saith that she came into possession of the land claimed by petitioners, to wit: Three arpents five and one half toises front on the Mississippi, by forty back, by virtue of a good and sufficient title, made to her said husband about the year 1808, and that her said husband during his lifetime, and your respondent up to the present time have held and peaceably enjoyed the same. Wherefore your respondent, and not the said petitioners, are entitled to the possession of the same, and is the true owner thereof. Respondent further shows that said land was purchased by her said husband in the year 1808, from Paul Chiasson late of said Parish, deceased, as appears by deed recorded in the office of the Parish Judge, of said Parish, for the sum of fifteen hundred dollars; that said Paul Chiasson departed this life in said Parish, on the , leaving a considerable estate, and the following forced heirs, who by law are bound to warrant and to defend the said title of their ancestor, under which this respondent holds; the said heirs are the following to wit:

1st. Maria Magdaline Chiasson Nogais, wife of Antonia Nogais, one of the children and forced heirs of said Paul Chiasson, deceased.

2d. Francoise Chiasson Arnandes (widow), child and forced heir of said Paul Chiasson, deceased.

3d. Lucien, Josephine, Elizabeth, Julie, and Appoline Chiasson, children of your respondent and her said husband, and grandchildren of said Paul Chiasson, representing their said father as an heir to said Paul; represented by their under-tutor, Elie Le Blanc.

4th. Delphine and Ursin Le Blanc, children of Victoire Chiasson Le Blanc, a daughter of Paul Chiasson, deceased, represented by their natural tutor, Elie Le Blanc.

5th. Marvin Chiasson Babin, wife of Pierre Babin, one of the children and forced heirs of said Paul Chiasson, deceased.

6th. Henriette Trozelle Chiasson, represented and assisted by Elie Le Blanc, her curator ad lites, Victorine Chiasson, represented by Marcel Duprey, his tutor, and Margaret and Irma Chiasson, represented by their natural tutrix, Maxille Le Blanc, all children of Victor Chiasson, deceased, one of the children and forced heirs of said Paul Chiasson, deceased, all of the Parish of Iberville, aforesaid.

7th. Margaret Chiasson Hebert (widow), of West Baton Rouge, a daughter and forced heir of said Paul Chiasson, deceased.

Respondent further shows that since the purchase and possession as aforesaid of said land by your respondent and her said husband, she has made on the same many useful and valuable improvements, to wit: fifty acres of land cleared and fenced, worth one thousand dollars, a dwelling-house erected, worth five hundred dollars, a gin-house and mill built, worth eight hundred dollars, a corn-house, worth two hundred dollars, four negro cabins built, worth two hundred dollars, one kitchen built, worth fifty dollars, and one pigeon-house built, worth fifty dollars; making in all improvements put on said plantation to amount of two thousand eight hundred dollars.

Wherefore respondent prays that said heirs of Paul Chiasson, deceased, be cited to appear according to law and defend respondent's title and possession to said land, and in case of the eviction of your respondent, that they be adjudged and decreed to pay to your respondent the said price of said land, to wit, fifteen hundred dollars, and the increase value thereof at the time of eviction, all fruits and revenues your respondent may be obliged to return to said petitioners, all costs of suit and expenses in resisting the claims of petitioners, and all damages in consequence thereof, to wit, one thousand dollars, and the value of said improvements, to wit, two thousand eight hundred dollars aforesaid. That your respondent be hence dismissed with her costs of suit; that this cause be tried by a jury, and that your respondent have all further relief that her case may require, and to justice and equity belongs.—(Signed) Felix Brunot, Jr., Attorney for respondent. Filed the 2d October, 1824.—(Signed) L. Petit, Clerk.

Minutes. 20th October, 1828.

ADELAYDA FLETCHER, the wife of JUAN CUESTA, and by him duly authorized, AND OTHERS, *v.* JULIA SHARP, widow of ETIENNE CHIASSON. } No. 445.

On motion of P. A. Cuvillier, attorney for petitioners, it is ordered by the Court, that a commission do issue in this case directed to the presiding Judge, or any of the associate Judges of the City of New Orleans, to take the deposition of Marin Agote, Esq., and any other witnesses that may be produced by either of the parties in this case. Continued by consent until the decision of the Supreme Court in the case of said plaintiff *v.* Constant Viel.

Minutes. 24th April, 1833.

No. 445.

The defendant is now the wife of William Maddox, and let him be made party to this suit.

Minutes. 21st October, 1833.

ADELAIDE FLETCHER et al. *v.* JULIA SHARP, widow ETIENNE CHIASSON. } No. 445.

The death of the defendant, Julia Sharp, suggested.

Minutes. 24th March, 1835.

ADELAID FLETCHER *v.* JULIA SHARP, widow ETIENNE CHIASSON. } No. 445.

In this case, on the part of defendant's counsel, the death of George Sharp was suggested, and the cause continued, he being the tutor to the minors Elizabeth and Julia Chiasson, minor children of Julia Sharp, deceased.

Minutes. 28th April, 1834.

ADELAIDE FLETCHER et al. *v.* JULIA SHARP, widow of ETIENNE CHIASSON. } No. 445.

On motion of P. A. Cuvillier, attorney for plaintiffs, and on giving the Court to understand that Julia Sharp, the defendant in this cause, departed this life leaving six children her sole heirs, viz.: 1st. Lucien Chiasson, above age, residing in this parish. 2d. Josephine

Chiasson, married to Samuel Cobb, residing in the Parish of East Baton Rouge. 3d. Elizabeth Chiasson. 4th. Julia Chiasson, both minors, having for their tutor, George Sharp, residing in the Parish East Baton Rouge. 5th. Appoline Chiasson, minor, having for her tutor Ursin Slaughter, residing in the Parish East Baton Rouge. 6th. William Maddox, Junior, minor, having for his tutor, William Maddox, Senior, residing in this parish; and also that the aforesaid Lucien Chiasson, and the aforesaid Ursin Slaughter have been appointed the testamentary executors of said Julia Sharp, and have not as yet been discharged of said trust. It is ordered by the Court, that the abovenamed Lucien Chiasson, Josephine Chiasson, together with her husband, Samuel Cobb, George Sharp, as tutor of Elizabeth and Julia Chiasson, Ursin Slaughter, as tutor of Appoline Chiasson, and William Maddox, Sr., as tutor of her minor, William Maddox, as heirs, and the said Lucien Chiasson and Ursin Slaughter, as testamentary executors, be duly cited to appear and defend in the abovesaid cause.

Fourth District Court, Parish of Iberville. State of Louisiana.

ADELAYDA FLETCHER, the wife of JUAN CUESTA, AND OTHERS, *v.* JULIA SHARP, widow ETIENNE CHIASSON. } No. 445.

This cause having been duly set for trial, and the plaintiffs having failed to appear, either in person, or by attorney to plead their cause, on the day fixed for trial, and the counsel for the defendant having required that judgment of non-suit be rendered against the plaintiffs, it is therefore ordered, adjudged, and decreed by the Court, that judgment of non-suit be rendered against the plaintiffs, and that they be condemned to pay the costs of this suit to be taxed.—(Signed) in open Court, this 6th day of October, A. D. 1835.—(Signed) R. N. Ogden, Judge 4th Dist., 6th Oct. 1835.

Copies of Documents in suit of Fletcher v. *Victor Blanchard. No.* 475.

To the Honorable Louis Esnault, District Judge for the Fourth Judicial District of the State of Louisiana, holding sessions for and in the Parish of Iberville.

The petition of Adelayda Fletcher, duly authorized and assisted by her legitimate husband, Juan Cuesta, Felicitas and Maria Antonia Fletcher, minors, above the age of puberty, duly assisted by said Juan Cuesta, all residing in la neuva Vera Cruz, in South America, and here all duly represented by their attorney in fact, Etienne Caraby, of the City of New Orleans, within this State. Respectfully showeth:

That your three aforesaid petitioners are the children and sole heirs of the late Santiago Fletcher, formerly of the City of New Orleans, a merchant, and now deceased in the City of Madrid, in the year 1801, as your petitioners are ready to prove.

That at the time of his death the said Santiago Fletcher was the owner of several property, among especially was one plantation, situate in the Parish of Iberville, measuring seven arpents and twenty-five toises on the left bank of the Mississippi River, by forty in depth; all the buildings thereon, bounded on one side by the property of Paul Chiasson, and on the other by the one of Blanchard, and bought by your petitioners' father from Mr. Verbois, on the 11th of May, 1778, before Pierre Pedesclaux, Notary *Notary* in New Orleans. That ever since the year 1806, the said property has been unlawfully disposed of, to the great prejudice and damage of your petitioners.

That one Mr. Victor Blanchard, residing in the aforesaid Parish of Iberville, became possessed, and is still now in possession of one arpent and twenty-five toises front by forty in depth of the aforesaid property, without any legal title whatever, and enjoyed the rents and profits thereof to the great prejudice and damage of your petitioners, and that he neglected and refused, and still now refuses and neglects to restore the same to your petitioners, though requested so to do.

Wherefore your petitioners respectfully pray your Honor to order that all necessary may issue in this case, and that the said Victor Blanchard be duly served with a copy of this petition, as the law directs, and be cited to answer this petition, and be condemned to restore unto your said petitioners the aforesaid property, with all the said rents and profits accrued thereto, from the year 1806 to the day the said plantation shall be restored to them, at the rate of two hundred dollars a year, with costs of suit.

And your petitioners further pray for all other and further relief which the nature of the case may require, and equity meet with. And as in duty bound they will, &c. &c. (Signed) Cuvillier, attorney for petitioners.

(Indorsed.)

I acknowledge service of this petition, 10th April, 1824. (Signed) Victor Blanchard. Filed 16th April, 1824. (Signed) L. Petit, Clerk.

Answer of Victor Blanchard.

To the Hon. the Judge of the Fourth District Court of the State of Louisiana, Parish of Iberville.

Victor Blanchard, in answer to the petition against him exhibited by Adelaide Fletcher and others, says, he has purchased the tract of land claimed by said petitioner from Joseph Le Blanc, called Adom, of the Parish of Iberville; that this respondent has a good and law-

ful title to the same, and denies the right of said Adelaide and al. to said land; that should it appear that said Le Blanc had not a good and legitimate title to said land, this respondent bought with guaranty according to law.

Your respondent further says, that said Jh. Le Blanc Adom died some time since, leaving legitimate heirs, who are bound by law to warrant the title of said above land, as it will appear by the annexed bill of sale, duly recorded at the office of the Parish Judge of the parish of Iberville.

Therefore, your petitioner prays that he may be allowed to call in warranty the above-mentioned heirs, to wit, Simon Le Blanc, son of the late Jh. Le Blanc; Thomas Hebert, and his wife, Adelaide Le Blanc; Widow Elie Hebert, alias Margaret Le Blanc; Widow Senateur Babin, alias Elie Le Blanc; Mercel Duprey and his wife, Josephine Le Blanc, and Edward Le Blanc, all living in the parish of Iberville. That copies of this petition, and the whole of the proceedings in this case, be served on them; that they be respectively cited to appear before this Court in due course of law, to defend the title made by their ancestor to your respondent; and that in case judgment should be rendered against this respondent by the same decree, he may be to recover from said heirs the sum of five thousand dollars, as well for the sum paid for the land than for any other damages, improvements, &c., which may have accrued to him, and to which he is entitled by law, and also the costs of this suit, and prays for further relief.—(Signed) Hiriat, for respondent.

Indorsed. Let the within-named warrantors be served with a copy of the proceedings of this case, and be cited to appear as prayed for. This 1st October, 1827.—(Signed) L. Esneault, Judge 4th District. Filed 3d October, 1827.—(Signed) J. A. Haase, Clerk.

Minutes, 20th October, 1828.

ADELAIDE FLETCHER, wife of Juan Cuesta, and by him duly authorized, and others,
v.
VICTOR BLANCHARD. } No. 475.

On motion of P. A. Cuvillier, attorney for petitioners, it is ordered by the Court that a commission do issue in this case directed to the presiding judge, or any of the associate judges of the City Court of New Orleans, to take the deposition of Marin Agote, Esq., and any other witnesses that may be produced by either of the parties in this case. Continued by consent until the decision of the Supreme Court in the case of said plaintiffs *v.* Constant Viel.

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Minutes, 24th April, 1833.

ADELAIDE FLETCHER et al.
v.
VICTOR BLANCHARD. } No. 475.

On motion of Hiriat and Nicholls, of counsel for defendants, and on suggesting the death of Gregorin Babin and Abraham Arceneaux, defendants in this case, it is ordered that the heirs of said Babin and Arceneaux be made parties to this suit.

It is further ordered, that defendants be permitted to amend their answers by calling in their warrantors, and by adding a claim for the value of the improvements, and that cause be continued.

Answer of Le Blanc's heirs.

ADELAIDE FLETCHER et al.
v.
VICTOR BLANCHARD, and the Heirs of Le Blanc, called in warranty.

The heirs of Joseph Le Blanc, called in warranty in the above suit, came into Court by the undersigned their counsel, and say, that plaintiffs ought not to have or maintain suit, because they say that they, the plaintiffs, are not the heirs and legal representatives of James Fletcher, deceased, as is by them falsely alleged. These respondents further say that the late Joseph Le Blanc was the rightful owner and proprietor of the land sued for, and that Victor Blanchard has a lawful and indefeasible title thereto.

Wherefore these respondents pray judgment against the plaintiffs, and that they be dismissed with costs. (Signed) Thos. C. Nicholls, Attorney for Le Blanc's heirs.

Filed 22d April, 1829. (Signed) J. A. Haase, Clerk.

Judgment.

ADELAIDE FLETCHER, wife of JUAN CUESTA et al.
v.
VICTOR BLANCHARD. } No. 475.

Fourth District Court, Parish of Iberville, September 29th, 1835.

This cause having been duly set for trial, and the plaintiffs having failed to appear, either in person, or by attorney, to plead their cause, on the day fixed for trial, and the counsel for the defendant having required that judgment of non-suit be rendered against the plaintiffs, it is therefore ordered, adjudged, and decreed by the Court that judgment of non-suit be rendered against the plaintiffs, and that they

be condemned to pay the costs of suit to be taxed. Signed, in open Court, this 6th day of October, A. D. 1835. (Signed) R. N. Ogden, Judge 4th District.

I, Paul Deolieux, Clerk of the Fourth Judicial District Court of the State of Louisiana, in and for the Parish of Iberville, do hereby certify that the foregoing twenty-three pages contain a true and correct copy of documents filed, entries made, and of judgments of nonsuit rendered in the five causes therein stated, of Adelayda Fletcher et al. *v.* Constant Viel, No. 443; The same *v.* Simeon Allain, No. 442; The same *v.* Thomasson Blanchard, No. 444; The same *v.* Julia Sharp, widow of Etienne Chiasson, No. 445; and The same *v.* Victor Blanchard, No. 475, on the docket of said Court. In testimony whereof, I have hereunto set my hand and the seal of said Court, this 7th day of March, A. D. 1846. Paul Deolieux, Clerk. [Seal.]

COMPLAINANTS' EVIDENCE, No 8.

Filed March 17th, 1846.

Record of the Probate of the Will.

To the Honorable James Workman, Judge of the Court of Probates for the County of Orleans, The petition of Catherine Hipp, otherwise called Catherine Fletcher, of the City of New Orleans, respectfully showeth, that James Fletcher, late of the city and county aforesaid, deceased, made his last will and testament before Peter Pedesclaux, Notary Public, bearing date the thirteenth day of March, in the year of our Lord one thousand eight hundred and two, by which said last will and testament he constituted and appointed the said Catherine his sole executrix.

Wherefore, your petitioner prays your honor to grant her letters testamentary in the said estate, as in duty, &c.

(Signed) D. BRADISH,
For Petitioner.

Filed, Nov. 2d, 1805.
(Signed) HENRY BROWN.
Deputy Register.

Let the prayer of this petition be granted.
(Signed) JAMES WORKMAN.
Nov. 5th, 1804.

Be it remembered, that on the seventh day of November, one thousand eight hundred and five, before me, Henry Brown, Deputy Register of Wills, in and for the territory of Orleans, personally appeared Catherine Hepp, executrix named in and by the last will and testament of James Fletcher, late of the City of New Orleans, deceased, who declared that she accepted and took upon herself the

burden of the execution of the said will, and being sworn did declare that she will well and faithfully execute the said will according to law, and that she will make a just and true inventory of the goods and chattels, rights and credits, of the said James Fletcher, and file the same within sixty days in this office.

(Signed) KATHRIN HIPP FLETCHER.

[Seal of the Court of Probate.] In witness whereof, I have hereunto set my hand, and affixed the seal of office, the day and year first before written. (Signed) Henry Brown, Deputy Register of Wills for the Territory of Orleans.

The Government of the Territory of New Orleans.

To all whom these presents shall come, greeting:

Whereas, Catherine Hipp, of the City of New Orleans, named and appointed executrix of the last will and testament of James Fletcher, late of the City of New Orleans, deceased, having duly proved the same, has applied to the Court of Probates in and for the territory of Orleans by petition, praying the said Court to grant them letters testamentary thereon. Now know ye, that the said Catherine Hepp is hereby authorized and empowered to collect the goods and effects which were of the said deceased, to make a just inventory thereof, and all other lawful acts to do and perform as executor testamentary of the said last will and testament. Witness, James Workman, Esquire, Judge of the said Court, this seventh day of November, in the year of our Lord one thousand eight hundred and five, [SEAL.] and of the Independence of the United States the thirtieth. (Signed) Henry Brown, Deputy Register.

A true copy.

AND. D. DOURICOURT,
Register.

State late Court of Probates, now Second District Court of New Orleans.

I, the undersigned, do hereby certify that the foregoing is a true and correct transcript from the records of said late Court of Probates, taken from Miscellaneous Record, Vol. 1, page 106. In witness whereof, I hereunto set my hand, and affix the seal of said 2d District Court of New Orleans, this 25th day of May, A. D. 1853.

[SEAL.] GASPD. JAMES,
Deputy Clerk.

DEFENDANTS' EVIDENCE, No. 1.

Account between Catharine Hipp and Daniel Clark, of 1806.

Mrs. Catharine Hepp, Widow Fletcher, to Daniel Clark.

1806.		Dr.
To cash paid Francisco Ramon Cane,		$3,811 7½
Ditto paid for a conveyance of lands for her, per agreement,		8 4
Ditto paid for a power of attorney,		8
Aug. 8. To Clark paid her,		100
17. To do. do.		200
Sept. 10. To do. do.		100
18. To do. paid Lozane,		39
Oct. 20. To my note in her favor,		1,200
To cash paid for making the Levee on the lands at Iberville,		366
To cash paid her,		250
To cash paid Johnstone & Burke,		74 5
		$6,148 ½

Received of Daniel Clark the above sum of six thousand one hundred and forty-eight dollars, on account of lands sold by him for my account. New Orleans, 3d Sept., 1807.—(Signed) Catharine Hipp Ve. Fletcher.

Paid to Mais Lafon, since settling the above, for surveys, &c., as per his account, ... $25
Paid her by Capt. Davis, to my order, . . . 312

The sums mentioned in the deposition of Pedro Munir. (Signed) L's Turner, A. Peniston. A true copy.—M. Moreno, Deputy Clerk. [SEAL.]

DEFENDANTS' EVIDENCE, No. 2.

Translated from the Spanish.

Receipt, 14*th May,* 1806, *of Francisco Ramon Canes, to Catharine Hipp.*

In the City of New Orleans, on the fourteenth of May, eighteen hundred and six, and the thirtieth (30th) of the American Independence, before me, the notary, and witnesses, Mr. Francisco Ramon Canes, resident of, and doing business in this city, who is well known to me, and said that he has received from Mme. Catharine Hipp,

testamentary executrix of James Fletcher, deceased, the sum of three thousand eight hundred and eleven dollars, being the balance of all accounts with said deceased, which, to renounce the exception of *non numerata pecunea*, and hereby grants a formal receipt, in virtue of which, he declares *broken*, settled and cancelled, all the accounts which he had against the said Fletcher.

Thus done, and signed with the witnesses, who were Mr. Joaquin Lozano and Mr. John Baptiste Ramirez, both resident of this city, and present.

(Signed) FRANCISCO RAMON CANES,
JOQUIN LOZANO,
JOHN BAPTISTE RAMIREZ.

P. PEDESCLAUX,
Notary.

Copy duly certified by the Notary, Oct. 2d, 1824.

DEFENDANTS' EVIDENCE, No. 3.

Petition of Catharine Hipp to Superior Court, Territory of Orleans.

State of Louisiana.—First Judicial District Court.

Be it known that, on the eighteenth day of June, in the year of our Lord one thousand eight hundred and six, into the Superior Court for the late Territory of Orleans, came Catharine Fletcher, late Catharine Hipp, by her counsel, James Brown, Esq.; now filed the following petition, to wit:

To the Honorable the Judges of the Superior Court for the Territory of Orleans, humbly showeth: your petitioner, Catharine Fletcher, late Catharine Hepp.

That James Fletcher, lately deceased, in his lifetime, to wit, in the year 1801, sold to Francois Ramon Canes, of the City of New Orleans, three tracts of land lying on the Mississippi River, the boundaries and descriptions of which land may be found by reference to the act passed before Peter Pedesclaux, and dated the first day of December, in the year aforesaid. That the said Ramon Canes agreed to pay for the said three tracts of land the sum of nine thousand dollars, at the end of two years after the date of the said act, with the condition that the land should be considered unsold and revert to the said Fletcher in case the said sum of nine thousand dollars should not be punctually paid; that the said Canes has only advanced to the said Fletcher between three and four thousand dollars, which money he agreed to receive if refunded, and cancel the deeds for the said lands; that as the said tracts, in consequence of the change of Government, are now greatly enhanced in value, your petitioner being qualified as executrix agreeably to the appointment in the last will of the said

Fletcher, and thinking it greatly to the advantage of her infant children, procured a loan from Mr. Daniel Clark—the sum necessary to exonerate said lands, which have been transferred by said Canes to said Clark as a security for the money.

That agreeably to the last will and testament of the said Fletcher, the proceeds of the sales of said lands were directed to be put out on interest, on good security, for the said petitioner and her children, until the children should arrive at the age of sixteen, and then divided amongst them. Your petitioner states that the said lands are now unproductive to her and her children, and she unable to pay to Mr. Clark the money loaned to redeem them. Your petitioner therefore prays, that in order to enable her to pay her debt, to provide a fund for the maintenance and education of her children, and to carry the intentions of the testator into effect, your Honors may decree that she make sale of the said lands for such price as may be obtained; she previously giving security to lay out on good security the money remaining after paying the debt due to said Clark, at interest, to meet the objects of the testator, by maintaining herself and her children; and such other relief to grant as to the Court may seem just, &c.—Signed, Brown, for petitioner.

Afterwards, to wit: At a session of the Superior Court of the Territory of Orleans, holden in the city of New Orleans, on Wednesday, the eighteenth day of June, in the year of our Lord one thousand eight hundred and six, the following decree was entered upon record.

"Present, the Honorable J. B. Prevost. On the petition of Catharine Fletcher, late Catharine Hepp, executrix of James Fletcher, deceased, it is ordered that the said Catharine be duly empowered to sell and convey, for such price as may be obtained therefor, each and all of these several tracts of land, formerly conveyed by said James Fletcher to Francis Ramon Canes, by deed passed before Peter Pedesclaux, dated this 1st day of December, 1801, and which have been reconveyed to the estate of the said Fletcher, and that she receive the money thereon, and lay out the same on good security for the maintenance of herself and children, agreeably to the direction of said Fletcher's will, first paying to Mr. Daniel Clark any sums which may be due or become due to him for advances made to said Canes, in order to obtain a relinquishment of his claim on said tracts of land."

State of Louisiana.—First Judicial District Court.

I, Martin Gordon, Clerk of the first Judicial District Court of the State of Louisiana, do hereby certify that the foregoing petition is a copy from the original, filed in the Superior Court of the late Territory of Orleans, on the eighteenth day of June, in the year of our Lord one thousand eight hundred and six, as the same appears from

an indorsement made on the original; and the foregoing decree is a copy from the record of said Court, under the date therein specified. That the records of said Court were, by law, transferred to this Court. In testimony whereof, I have hereunto set my hand and affixed the seal of the District Court, at the City of New Orleans, on this ninth day of April, in the year of our Lord one thousand eight hundred and nineteen, and in the forty-third year of the Independence of the United States.—Martin Gordon, Clerk. A true copy.—M. Moreno, Deputy Clerk. [SEAL.]

DEFENDANTS' EVIDENCE, No. 4.

(Translated from the Spanish.)

Account between Fco. R. Canes and James Fletcher, in 1803 and 1804.

Mr. James Fletcher, in account current with Francisco Ramon Canes, and this account presented to the Widow of said Fletcher, Madam Catherine Hipp.

Money paid.

	Dr.
For a receipt of Mr. James Fletcher, of date of 5th Sept., 1803, the sum of three thousand dollars cash, which I paid for him to Messrs. Morico & Arbuthnot,	$3,000 00
For the interest of said obligation, from the 5th Sept., 1803, to the 5th December, 1804, at the rate of ten per cent.,	375 00
For my commission on the collections made, as shown by the credit side of this account,	39 00
For the interest of $408 advanced to the Brig "San Francisco de Aises," as per account, delivered to the Widow, from the 9th of September, 1803, to the 9th December, 1804, at the rate of ten per cent.,	50 50
For money advanced (*sub ministrado*) to said lady, by order of said Mr. Fletcher, as per account rendered to her in detail,	1,903 37½
For the interest of the money advanced to her gratis,	0 00
For postage on letters which arrived from Spain,	1 25
For two empty sugar barrrels, at 25 cents per barrel,	50
	$5,369 62½

Money received.

	Cr.
By two months' rent of the house I received, for the months of August and September, 1803, at the rate of $8 37½ per month,	$16 75

By nine months' rent of same, for the months of October, November, December, 1803, and January, February, March, April, May, and June, at the rate of ten dollars per month, to which amount I raised the rent,	90 00
By three months' do. do., the months being July, August, and September, 1804, at the rate of twelve dollars per month, to which amount I raised it, . . .	36 00
Received for the hire of the negro Marcos, . . .	24 12½
[Bad debt.] Received from the Depository-General of this city the sum of two hundred and twenty-four dollars fifty cents, which Joseph Garcia had on deposit, and which said Garcia owed to Fletcher, Oct. 26, 1803, ...	224 50
[Bad debt.] Received of Mr. Domingo Boulyney the sum of two hundred and forty dollars and seventy-five cents, which Louis D'Appremond owed to Joseph Garcia, and said Garcia owed to Fletcher, July 18, 1804, ...	240 75
Received of Joseph Fernandez the sum of . . .	11 50
[Bad debt.] Received of Mr. Livande the sum of three hundred and twenty dollars sixty-two and a half cents, which Mr. Antonia Mapeat owed to Fletcher, August, 1804, ...	320 62½
[Bad debt.] Received the sum of four hundred and fifty dollars from some one who gave a draft on Providence, given by Mr. Domingo Canes, . .	450 00
[Bad debt.] Received of the Captain of Artillery, Mr. Francisco Saber, ten dollars on a larger sum which he owes to Fletcher, ...	10 00
Received of James Carrich one hundred dollars, for the security of Mr. Munigrie, for one horse which he sold belonging to the carriage, ...	100 00
Received for the amount of the sugar which was found in a hogshead, amounting to $33 37½, and two hogsheads, which the widow sold, belonging to her husband, out of the six which remained in my possession in partnership with Mr. James Summetett, . . .	33 37½
	1,557 62½
By balance owed by James Fletcher or his succession to the said Mr. Canes, as shown by this account current, the sum of three thousand eight hundred and eleven dollars and ninety-three and three-fourth cents, .	3,811 93¾
Total, . .	$5,369 62½

Errors and omissions excepted.

New Orleans, Oct. 7th, 1804.

Notwithstanding that I don't understand the Spanish language, I have caused this account to be examined by a person in my confidence.

(Signed) CATHARINE HIPP,
WIDOW FLETCHER.

Indorsed.

A.—Received of Mr. Daniel Clark, for account of the Widow Fletcher, and by her order, the sum of three thousand eight hundred and eleven dollars, coming to me as per within account.

(Signed) FRANCISCO RAMON CANES.

NEW ORLEANS, May 14th, 1806.

DEFENDANTS' EVIDENCE, No. 5.

Filed 20th June, 1854.

Guaranty of Daniel Clark to J. B. Lobo, 11th March, 1806.

Translation from Spanish.

I, Daniel Clark, do say, that having informed Mr. John Baptiste Lobo of the pecuniary difficulties in which the widow of Mr. James Fletcher, residing in New Orleans, finds herself, and the request that she has made to me so that through my intervention and under my responsibility Mr. Lobo should advance to her four thousand dollars, out of the money which her deceased husband had in this city, and which has been seized by this consulate, and which said money is in the hands of the said Mr. Lobo; it has been agreed that said Lobo should give me, as he has done, in the way of a loan, four thousand dollars, in order that the necessities of the widow should be provided for with the said amount; but with the express condition of my guaranty to return it to him, in case that all the money now in the hands of said Lobo belonging to the said Fletcher should be ordered to be delivered to the Court, and nothing should be left to reimburse himself; and I, Clark, having agreed to this, I bind myself by this document to return the said four thousand dollars to the said Mr. Lobo, without any other proceedings or proof than the simple claim which the said Mr. Lobo should make to me of the same, and to his order I shall pay the same whenever he asks me for it. In testimony whereof I sign these presents in Vera Cruz, 11th March, 1806.

(Signed) DANIEL CLARK.

Opinion of the Court.

Delivered 13th November, 1854.

Circuit Court U. S., New Orleans.

MARIA FLETCHER HIPP et al.
v.
URSIN JOLLY et al.

James Fletcher, in the year 1802, in contemplation of an absence from this continent and to provide for the contingency of his death during his residence abroad, executed his last will, by which he bequeathed to his widow and two children who were alive, and to one, en ventre sa mere, his landed estate, share and share alike. He states in the will that he had made a sale of lands to Ramon Canes for $9000, as may be seen by the copy of the sale here inclosed, which sale should have no effect. But if he should persist in it the amount is to be put to interest on good security for the mother and children until they arrive at the age of sixteen, and then is to be equally divided amongst them. The testator died in Spain in 1804, and thereupon his widow was permitted to execute his will as a qualified executrix. In May, 1806, Ramon Canes, above named, reconveyed to the heirs of Fletcher the lands sold to him in 1801, and received from the executrix the money he had advanced on his contract, amounting to $3811 87. Shortly after this the widow filed a petition in the Superior Court of the Orleans Territory, setting forth the facts above stated, and representing that she had borrowed the money from Daniel Clark to pay Canes, and had no means to refund the amount; and that she desires to fulfil the directions of the will in regard to the $9000, she thereupon asks for a license to sell the lands. The order was granted without prescribing any terms of sale, and was executed by the widow by making a private sale to Clarke.

The Supreme Court of Louisiana has had this transaction under review, and decided that the private sale of an executrix does not pass the title, and that the right remained with the heirs of Fletcher. Fletcher *v.* Cavelier, 4 La. R.; Fletcher 10 La. R., 120. The bill sets forth the relations of the widow of Fletcher to have been originally illegitimate, and that these children were born during that period, and that they take entirely under the will and the deed of Canes. The bill is filed by two of the children, and the forced heirs of a third. Its object is to assert the invalidity of the sale, and to recover the lands and mesne profits. The bill can only be considered as it is found after the alterations and amendments to it. This is regarded as the original bill, and those portions which have been altered or expunged are no longer regarded as parts of the record, nor are the averments obligatory upon the complainants.

This bill exhibits all the documents relative to the title of Fletcher, and the mode by which that title was disturbed by the acts of the widow and of Clarke, in the form of exhibits and answers, the pretences that their claim was barred by time. The answers rest upon the pleas of prescription, and that the defendants derive title from bona fide purchasers of Clarke, and are themselves bona fide purchasers, and assert a title under the Widow Fletcher, to a part of the land, under a community right, and as devisee. The case has been elaborately and ably argued upon these grounds, but the view I take of the jurisdiction of this Court dispenses with the necessity of a minute examination either of the law or facts.

The 16th section of the Judiciary Act of 1789 provides, "That suits in equity shall not be sustained in either of the Courts of the United States, in any case where plain, adequate, and complete remedy may be had at law."

The bill in the present case furnishes no reason for an application to the Court of Chancery, arising out of any particular condition of the parties; nor that a Court of Chancery is possessed of means to render a relief better suited to the claims of the case.

The title is known, and depending upon documents accessible to all the parties in interest—a portion of the land has been recovered in petitory actions commenced in the State Courts. The remedy at law is plain, adequate, and complete.

In Welby *v.* Duke of Rutland (2 Bro. P. C. 39, Tomlin's ed.), a bill was brought for a recovery of a manor, of which the plaintiff and his ancestors had been seized; and the defendant was charged with having invaded with a claim of title, but without right, and upon which the plea and answer set up a title in the defendant, and there was a replication. Upon the hearing, the bill was dismissed. The principles applicable to this case are set forth with great clearness in the following argument before the House of Lords: "The title appeared by the bill to be merely legal. Such suits are never entertained by a Court of Equity, unless there are particular circumstances stated in the bill showing the necessity of the Court's interposition, either for preventing multiplicity of suits, or other vexation, or for preventing an injustice irremediable by a court of law.

"That no such circumstances were even suggested by this bill; there could not in this case, by any pretence for vexation or multiplicity of suits, for none but the appellant and respondent were concerned in the question.

"The general practice of Courts of Equity, in not entertaining suits for establishing legal titles before they have been tried at law, is founded upon clear reasons; and the departure from them in practice, when there is no necessity for so doing, would be subversive of the legal and constitutional distinction between the different jurisdictions of law and equity; and though the admission of a party in a suit is conclusive of matters of fact, or may deprive him of the

benefit of a privilege, which, if insisted on, would exempt him from the jurisdiction of the Court, yet no admission of parties can change the law or give jurisdiction to a Court, in a cause of which it hath no jurisdiction; agreeably hereto, the established and universal practice of Courts of Equity is to dismiss the plaintiff's bill, if it appears to be grounded upon a title merely legal, and not cognizable by them, notwithstanding the defendant has answered the bill, and insisted on matter of title." This argument was affirmed in the judgment pronounced in that cause, and its principles are sustained in the English Courts. Renison *v.* Ashley, 2 Ves. jr. 459; Laker *v.* Ralle, 3 Vesey, 3; Aldis *v.* Frosco, 15 Beav. 215.

It is quoted with approbation, and enforced by Courts of great authority in the United States. Stuart *v.* Coulter, 4 Rand, 74; 5 Leigh, 192; 2 John. Ch. R. 519.

Some of the State Courts of reputation have relaxed the rule of the English Chancery so far, as to require questions of jurisdiction to be presented in the pleadings, and they discountenance the objection when taken as late as the hearing of the cause. 2 John. Ch. R. 339; 4 Paige Ch. R. 77; 1 Baily Ch. R. 62, 113; 1 S. & Marsh. Ch. R. 5 & 13.

The opinions of the Circuit Court of the United States have not accorded with this relaxed practice. Bald. C. C. R., 403; Pumpent *v.* Fowle, 2 W. & M. 24; Peyne C. C. R. 525. And several cases in the Supreme Court show, that even there, if the remedy at law is plain and adequate, the bill will not be sustained. 2 Crouch, 419; 7 Cranch, 70, 89; 5 Peters, 496; 2 How. 383. Though obviously that Court will feel great hesitation in taking, mero matu, an exception of this kind, at so late a stage in the proceedings, and where expense, delay, and inconvenience would follow the dismissal of the bill for this exception. Amis et al. *v.* Myers, 16 How. 1; McCord Ch. R. 242.

My opinion is, that this Court has not jurisdiction of the bill, and that it must be dismissed at the complainants' costs.

Final Judgment.

November Term, 1854.

MARIA FLETCHER HIPP et als., Heirs, &c.,
v.
URSIN JOLLY et als. } 1285.

New Orleans, Monday, 13th November, 1854. Court met pursuant to adjournment. Present, Hon. J. A. Campbell, Presiding Judge; absent, Hon. Theo. H. McCaleb, District Judge.

This cause came on to be heard at the last term of the Court, upon pleading and proofs, and was argued by counsel; and the Court

having considered the same, this day delivered its opinion, and in conformity thereto doth now order that the complainants' bill be dismissed with costs.

Decree rendered 13th November, 1854.

Signed 20th November, 1854.

J. A. CAMPBELL,
Associate Justice of the Supreme Court of the United States.

Minutes. November Term, 1854.

New Orleans, Tuesday, 21st November, 1854. Court met pursuant to adjournment. Present, Hon. J. A. Campbell, Presiding Judge; present, Hon. T. H. McCaleb, District Judge.

MARIA FLETCHER HIPP et als., Heirs, &c.,
v.
URSIN JOLLY. } 1285.

In this case, a petition for a rehearing having been submitted by the complainants and examined by the Court, the same is overruled.

New Orleans, Tuesday, 17th April, 1855. Court met pursuant to adjournment. Present, Hon. T. H. McCaleb, District Judge. Absent, Hon. J. A. Campbell, Presiding Judge.

FLETCHER'S HEIRS
v.
URSIN JOLY et al. } No. 1285.

On motion of T. Perin, Esq., of counsel for complainants, and on presenting and filing their petition, representing that they are aggrieved by the final decree herein rendered against them on the 13th November, 1854, and praying an appeal therefrom to the next term of the Supreme Court of the United States, it is ordered that an appeal be allowed as prayed for, on complainants giving bond conditioned according to law, in the penal sum of five hundred dollars with Nich. C. Hall as surety thereon.

Petition for Appeal.

Filed 17th April, 1855.

FLETCHER'S HEIRS
v.
URSIN JOLY, et al. } No. 1285.

To the Honorable the Judges of the Circuit Court of the United States in and for the Fifth Circuit, holding Sessions in the Eastern District of Louisiana.

The petition of Maria Antonio Fletcher Hipp, Augustin Cuesta, Casto Fernandez and his wife, Jariera Cuesta y Fletcher, Jose De-

sodario Herno and his wife, Felicitas Cuesta y Fletcher, and Thomas Carrol, respectfully represents that in the above-entitled suit in which your petitioners are complainants and Celine Babin, widow of Ursin Joly, acting herein as widow in community, and natural tutrix of Louis Joly, Analote Joly, and Olympe Joly, of Lodoiska Joly, wife of Robert Tousson, who joins and assists her herein, the said Louis, Analote, Olympe, and Lodoiska being the heirs of Ursin Joly, Margarot Le Blane, widow of Victor Babin, acting herein as widow in community, and natural tutrix of Elize Babin and Mirza Babin, minors, and Adolphe Babin—the said Eliza, Mirza, and Adolphe, being the heirs of Victor Babin; Rene Arnous, Hortense Le Blane, widow of Julien Allain, herein acting as widow in community and natural tutrix of Julien Allain, Leocade Allain, and Elodie Allain, minors, and Zoe Allain, wife of Leonidas Reddick, who joins and assists her herein.

Are defendants, lately pending in this Honorable Court, a final decree has been rendered against your petitioners, dismissing their bill of complaint with costs, with which said judgment they are dissatisfied, and are advised and believe that there are errors in the proceedings and said final decree to the prejudice and injury of your petitioners, and from which they desire to be relieved. And to that and pray an appeal to the Supreme Court of the United States, that the errors complained of may be inquired into and corrected. And your petitioners aver that the land in controversy in this suit is of the value of more than twenty thousand dollars.

In consideration of the premises, your petitioners pray that an appeal may be allowed them herein according to law to the Supreme Court of the United States on their giving such bond and security as the law requires, which they are here ready to do. That the above-named defendants may be made parties hereto, and duly cited, admonished, and commanded to appear in said Supreme Court, to answer herein; and that all such other orders may be granted herein as will make effectual the purposes of your petitioners which the law may allow or require.

(Signed) SMILEY & PERIN,
For Complainants.

Bond for Appeal.

Filed 17th April, 1855.

Know all men by these presents, that we, Maria Antonia Fletcher Hipp, Augustin Cuesta, Casto Fernandez and his wife, Javiera Cuesta y Fletcher, Jose Desidario Herreno and his wife, Felicitas Cuesta y Fletcher, and Thomas Carral, and Nicholas C. Hall are held and firmly bound, jointly and severally, unto Celine Babin, widow of Ursin Joly, acting herein as widow in community and natural tutrix of Louis Joly, Analote Joly, and Olympe Joly, and Lodoriska Joly, wife of Robert Toussan, who joins and assists her

herein, the said Louis, Analote, Olympe, and Lodoriska, being the heirs of Ursin Joly, Margaret Le Blane, widow of Victor Babin, acting herein as widow in community and natural tutrix of Elise Babin and Mirza Babin, minors, and Adolphe Babin; the said Elise, Mirza, and Adolphe, being the heirs of Victor Babin; Rene Arnous, Hortense Le Blane, widow of Julien Allain, herein acting as widow in community and natural tutrix of Julien Allain, Leocadie Allain, and Elodie Allain, minors, and Zoe Allain, wife of Leonidas Reddick, who joins and assists her herein, in the sum of five hundred dollars, lawful money of the United States of America, to be paid to the said Celine Babin, and the others herein named, their heirs, executors, administrators, and assigns, for which payment well and truly to be made, we bind ourselves, and each of us by himself, and each of our heirs, executors, administrators, firmly by these presents, sealed with our seals, and dated the sixteenth day of April.

Whereas, the above-bounden Maria Antonia Fletcher Hipp, Augustin Cuesta, Casto Fernandez and his wife, Janeva Cuesta y Fletcher, Jose Desedario Herrero and his wife, Felicitas Cuesta y Fletcher, and Thomas Carral, have this day presented a petition to the Honorable the Circuit Court of the United States, for the Fifth Circuit, holding sessions in and for the Eastern District of Louisiana, and praying an appeal from the final decree, rendered by the said Court, on the 13th of November, 1854, against the said Maria and the other complainants, dismissing their bill of complaint, in a cause lately pending in the said Circuit Court, wherein the heirs of Fletcher are complainants, and Ursin Joly et al. were defendants, No. 1285.

Now, the condition of the above obligation is, that we, the above-bounden Maria and the other complainants, and Nicholas C. Hall, will well and truly pay to the said Celine Babin and the other defendants above named, in said appeal, all such damages as they may recover against us, in case it should be decided that the said appeal was wrongfully obtained.

Signed, sealed, and delivered in the presence of

F. PERIN.

Maria Antonio Fletcher Hipp, Augustin Cuesta, Casto Fernandez, Janira Cuesta y Fletcher, Jose Desodario Herrero. [SEAL.]

Felicitas Cuesta y Fletcher, Thomas Corral, per F. Perin, their Agent and Attorney. [SEAL.]

Nicholas C. Hall. [SEAL.]

Approved.

THEO. H. McCALEB,
U. S. Judge.

Agreement.

Filed 14th November, 1855.

FLETCHER'S HEIRS
v.
JOLY et al. } No. 1285.

United States Circuit Court.

Is is agreed that the various acts of sale, copies of the judicial proceedings, and proof of the transmissions by inheritance under which the defendants claim title to the land in dispute, from Daniel Clark down, which were adduced and filed by defendants on the trial of this case, shall be omitted and not copied in the transcript of the record, and that the admissions in relation thereto contained in the paper filed on the 14th June, 1854, shall stand in place of the same, and that the transcript shall be held as full and complete as though the said papers and evidence had been copied therein.

And it is further agreed, that the agreements made by counsel, filed June 14th, 1854, and the pleadings, orders, decrees, and documents copied into the record of appeal, shall be considered as an agreed case for the Supreme Court of the United States.

It is further agreed, that the complainants offered in evidence two transcripts of the registry of baptism of the Church of St. Louis, dated March 14th, 1851, showing the date of the registries and births of the said Adelayde Felicite and Maria Antonia Fletcher Hipp. That in the original registries, all of the said parties were described as the natural or illegitimate children of James Fletcher and Catharine Hipp (hija natural de, &c.), and that on the 8th December, 1804, the keeper of the said registry made a note on the margin of the registry of said Adelayde, that she and said Felicite were legitimated in consequence of the subsequent marriage of their parents, and the word "natural" in all the said registries was partially erased, by drawing a pen through the word, leaving it legible; and the word "legitima" (legitimate) interlined.

1st. That the registry of Adelayde was made on the 5th of December, 1798, stating she was born on the 13th March, 1797.

2d. That the registry of Felicite was made on the 5th December, 1798, stating that she was born on the 13th March, 1797.

3d. That the registry of Maria Antonia was made the 5th September, 1803, stating that she was born on the 17th of July, 1802.

That these facts be considered a part of the said transcript.

(Signed) MILES TAYLOR,
Solicitor for Defendants.

(Signed) SMILEY & PERIN,
For Complainants.

November 14th, 1855.

It is further agreed that the translations of all the Spanish documents found in the record shall be considered true translations, as if made by the sworn officer of the Court. This agreement includes the acquittance of F. R. Canes to Madame Hipp, dated May 14th, 1806, account furnished by said Canes to said Madame Hipp, with his receipt on the back thereof, dated May 14th, 1806, and the guaranty of Daniel Clark to Lobs of $4000, dated March 11th, 1806; and where the originals are omitted, in the record, the copies shall stand therefor.

(Signed) SMILEY & PERIN,
For Complainants.

(Signed) MILES TAYLOR,
For Defendants.

I consent that the return day in this case be extended for thirty days.

(Signed) MILES TAYLOR,
For Defendants.

November 23d, 1855.

Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana.

I, John W. Gurley, Clerk of the Court aforesaid, do hereby certify, that the foregoing one hundred and ninety-five pages contain a true and perfect transcript of all such documents, and proceedings had, in the case of Fletcher's Heirs *v.* Ursin Joly et als., No. 1285 of the docket of the said Court, as were selected by the Counsel of the respective parties, to compose the record on appeal to the Supreme Court of the United States.

[SEAL.] Witness my hand and the seal of said Court, at New Orleans, this thirteenth day of December, A.D. 1855.

J. W. GURLEY,
Clerk.